





UNIVERSITY  
OF CALIFORNIA  
LOS ANGELES

LAW LIBRARY











**THE  
COMMERCIAL LAWS OF THE WORLD**

**VOLUME VIII  
UNITED STATES OF AMERICA**

**PARTS XIII AND XIV**



ALL RIGHTS RESERVED  
ALSO THE RIGHT OF TRANSLATION INTO FOREIGN LANGUAGES

#### AMERICAN EDITION

THE COMMERCIAL LAWS OF THE WORLD, EDITED BY  
THE HON. SIR THOMAS EDWARD SCRUTTON,  
JUDGE OF THE KING'S BENCH DIVISION OF THE HIGH  
COURT OF JUSTICE, ENGLAND (CONSULTING EDITOR),  
WILLIAM BOWSTEAD, OF THE MIDDLE TEMPLE,  
BARRISTER AT LAW, LONDON (GENERAL EDITOR).  
CHARLES HENRY HUBERICH, J. U. D. (HEIDEL-  
BERG), D. C. L. (YALE), LL. D. (MELBOURNE), COUNSELLOR  
AT LAW, BERLIN AND PARIS, PROFESSOR OF LAW IN THE  
LAW SCHOOL OF THE LELAND STANFORD JUNIOR UNIVER-  
SITY (CALIFORNIA)

---

BOSTON, MASS.  
THE BOSTON BOOK CO.  
83-91, FRANCIS STREET

#### FRENCH EDITION

LE DROIT COMMERCIAL DE TOUS LES PAYS CIVILISÉS  
EDITÉ BY DR. LYON-CAEN, PROFESSOR AND DEAN  
OF THE FACULTY OF LAW IN PARIS, PAUL CARPEN-  
TIER, EDITOR AND MEMBER OF THE FRENCH BAR, LILLE,  
AND FERNAND DAGUIN, MEMBER OF THE FRENCH  
BAR, COURT OF APPEAL, PARIS, SECRETARY GENERAL OF  
THE FRENCH LAW ASSOCIATION, SECRETARY OF THE  
WORKS, HENRI PRUDHOMME, JUDGE OF THE HIGH  
COURT AT LILLE

---

PARIS  
LIBRAIRIE GÉNÉRALE DE DROIT  
ET DE JURISPRUDENCE  
F. PICHON & DURAND-AUZIAS

#### GERMAN EDITION

DIE HANDELSGESETZE DES ERDBALLS, ORIGINATED BY DR. OSKAR BORCHARDT, BERLIN, AND EDITED BY DR. JOSEF  
KÖHLER, GER. JUSTIZRAT (K.C.), PROFESSOR AT THE UNIVERSITY OF BERLIN, HEINRICH DÖVE, GER. JUSTIZRAT (K.C.),  
SYNDIC OF THE BERLIN CHAMBER OF COMMERCE, MEMBER OF THE REICHSTAG, GEH. JUSTIZRAT (K.C.) DR. FELIX MEYER,  
JUDGE OF THE COURT OF APPEAL, BERLIN, AND DR. HANS TRÜMPER, SYNDIC OF THE FRANKFURT CHAMBER OF COMMERCE

---

BERLIN (SW. 19)  
R. v. DECKER'S VERLAG  
G. SCHENCK  
KÖNIGLICHER HOFBUCHHÄNDLER

# THE COMMERCIAL LAWS OF THE WORLD

COMPRISING

THE MERCANTILE, BILLS OF EXCHANGE, BANKRUPTCY  
AND MARITIME LAWS OF ALL CIVILISED NATIONS

TOGETHER WITH

COMMENTARIES ON CIVIL PROCEDURE,  
CONSTITUTION OF THE COURTS, AND  
TRADE CUSTOMS

IN THE ORIGINAL LANGUAGES INTERLEAVED  
WITH AN ENGLISH TRANSLATION

*CONTRIBUTED BY*

*NUMEROUS EMINENT SPECIALISTS OF ALL NATIONS*

## BRITISH EDITION

CONSULTING EDITOR:

**THE HON. SIR THOMAS EDWARD SCRUTTON,**  
JUDGE OF THE KING'S BENCH DIVISION OF THE HIGH COURT OF JUSTICE

GENERAL EDITOR:

**WILLIAM BOWSTEAD,**  
OF THE MIDDLE TEMPLE, BARRISTER AT LAW

LONDON

SWEET & MAXWELL LIMITED  
3 CHANCERY LANE

✓  
T  
C 7368  
1311  
v.8

# THE COMMERCIAL LAW OF THE UNITED STATES OF AMERICA

BY

**CHARLES HENRY HUBERICH**

J. U. D. (HEIDELBERG), D. C. L. (YALE), LL. D. (MELBOURNE), COUNSELLOR  
AT LAW, BERLIN AND PARIS, PROFESSOR OF LAW IN THE LAW SCHOOL  
OF THE LELAND STANFORD JUNIOR UNIVERSITY (CALIFORNIA)

WITH THE COLLABORATION OF

**JOSEPH RICHARDSON BAKER**

A. B., OF THE SOLICITOR'S OFFICE OF THE DEPART-  
MENT OF STATE, WASHINGTON

**DONALD JOSEPH KISER**

PH. B., ATTORNEY AND COUNSELLOR AT LAW,  
CHICAGO

**HENRY WINTHROP BALLANTINE**

A. B., LL. B., ATTORNEY AND COUNSELLOR AT LAW,  
SAN FRANCISCO

**JAMES B. LICHTENBERGER**

A. B., LL. B., ATTORNEY AND COUNSELLOR AT LAW,  
PHILADELPHIA

**FRANK ELLSWORTH CHIPMAN**

ATTORNEY AND COUNSELLOR AT LAW,  
BOSTON

**JOSEPH WALKER MAGRATH**

B. S., ATTORNEY AND COUNSELLOR AT LAW,  
NEW YORK

**ROBERT THOMAS DEVLIN**

UNITED STATES ATTORNEY,  
NORTHERN DISTRICT OF CALIFORNIA

**ORRIN KIP MCMURRAY**

A. B., LL. B., PROFESSOR OF LAW IN THE UNI-  
VERSITY OF CALIFORNIA (BERKELEY)

**CHARLES ANDREWS HUSTON**

A. B., J. D., PROFESSOR OF LAW IN THE LAW SCHOOL  
OF THE LELAND STANFORD JUNIOR UNIVERSITY  
(CALIFORNIA)

**WILLIAM UNDERHILL MOORE**

A. M., LL. B., PROFESSOR OF LAW IN THE UNI-  
VERSITY OF WISCONSIN (MADISON)

**WILLIAM REYNOLDS VANCE**

PH. D., LL. B., PROFESSOR OF LAW IN THE YALE  
LAW SCHOOL (NEW HAVEN)

PARTS XIII AND XIV

**LONDON**

**SWEET & MAXWELL LIMITED**

3 CHANCERY LANE

7 JUL 1915





# Table of Contents.

	Page
<b>XIII. Commercial Corporations</b>	1
Analysis	2
I. Scope of Article	10
II. Nature and formation of a corporation	10
III. Corporate powers	18
IV. Organization after incorporation	22
V. Management of corporations	24
VI. Shares and shareholders	33
VII. Dissolution of corporations	65
VIII. Extension of corporate existence	71
IX. Succession	71
X. Actions by and against corporations	74
XI. Rights of creditors of a corporation	76
XII. Corporate bond and mortgages	87
XIII. Legislative control over domestic corporations	92
XIV. Taxation	94
XV. Foreign corporations	100
<i>Statutes on Corporations and Monopolies</i>	117
Introductory	117
Abbreviations used in citing statutes	117
Uniform Stock Transfer Act	118
Statutes on Corporations	122
California	122
Canal Zone	153
Connecticut	154
Delaware	174
Illinois	192
Louisiana	210
Maine	223
Massachusetts	245
Michigan	263
Minnesota	295
New Jersey	309
New York	340
Ohio	399
Pennsylvania	412
Philippines	473
Porto Rico	491
West Virginia	500
Wisconsin	517
Statutes on Foreign Corporations	534
Alabama	534
Alaska	537
Arizona	539
Arkansas	539
Colorado	541
Columbia	544
Florida	544
Georgia	546
Hawaii	547
Idaho	549
Indiana	550
Iowa	553
Kansas	555
Kentucky	557
Maryland	559
Mississippi	561
Missouri	562
Montana	565
Nebraska	567
Nevada	570
New Hampshire	572
New Mexico	573

	Page
North Carolina . . . . .	574
North Dakota . . . . .	576
Oklahoma . . . . .	577
Oregon . . . . .	578
Rhode Island . . . . .	581
South Carolina . . . . .	582
South Dakota . . . . .	584
Tennessee . . . . .	585
Texas . . . . .	587
Utah . . . . .	589
Vermont . . . . .	590
Virginia . . . . .	592
Washington . . . . .	595
Wyoming . . . . .	597
Statutes on Monopolies and Combinations in Restraint of Trade . . . . .	598
Federal statutes . . . . .	598
State Acts . . . . .	602
California . . . . .	602
Illinois . . . . .	606
New York . . . . .	609
Federal Corporation Tax Law . . . . .	610
<b>XIV. Commercial Treaties and Consular Laws . . . . .</b>	<b>615</b>
Analysis . . . . .	616
Commercial Treaties . . . . .	616
History of commercial treaties . . . . .	616
List of commercial treaties in force . . . . .	617
Enforcement and interpretation of treaties . . . . .	627
Consular Regulations . . . . .	629

## XIII.

# COMMERCIAL CORPORATIONS

---

# Commercial Corporations.

(By Charles Andrews Huston, A. B., J. D., Professor of Law, Leland Stanford Junior University [California].)

## Analysis.

### I. SCOPE OF ARTICLE, 10

### II. NATURE AND FORMATION OF A CORPORATION

- A. *Definition*, 10
- B. *Nature of a Corporation*, 10
- C. *Function of the State*, 11
  - 1. *In General*, 11
  - 2. *Forms of Legislative Authorization*, 11
- D. *Function of the Individual Organizers*, 11
  - 1. *In General*, 11
  - 2. *Selection of a State of Incorporation*, 11
  - 3. *Selection of Legal Incorporators*, 12
- E. *Drafting of Articles of Incorporation*, 13
- F. *Contents of the Articles*, 13
  - 1. *In General*, 13
  - 2. *Corporate Name*, 14
  - 3. *Place of Business*, 14
  - 4. *Corporate Duration*, 14
  - 5. *First Directors*, 15
  - 6. *Corporate Purpose*, 15
    - Corporations for Unlawful Purposes*, 15
  - 7. *Provisions as to Capital*, 15
- G. *Procuring the Charter*, 16
  - 1. *Signing, Acknowledging, and Recording the Articles*, 16
  - 2. *Organization and other Taxes and Fees*, 16
- H. *When Corporate Existence Begins*, 16
  - 1. *Irregularities in Compliance with the Statute*, 17
    - 1. *Corporations De Jure*, 17
    - 2. *Corporations De Facto*, 17
    - 3. *Fatally Defective Compliance*, 17
    - 4. *Status of Defectively Organized Corporations, and of the Associates Therein*, 17

### III. CORPORATE POWERS

- A. *In General*, 18
- B. *Interpretation of the Statute*, 18
- C. *Special Powers*, 19
  - 1. *To Take and Hold Property*, 19
  - 2. *To Acquire Shares in Other Corporations*, 19
  - 3. *To Acquire its Own Shares*, 19
  - 4. *To Alienate Property*, 20
  - 5. *To Contract*, 20
    - Form of Corporate Contracts*, 20
  - 6. *To Incur Debts and Borrow Money*, 20
  - 7. *To Enter into Combinations*, 21
- D. *Excess of Granted Powers*, 21
  - 1. *Ultra Virs Contracts*, 21
  - 2. *Illegal and Prohibited Contracts*, 21

### IV. ORGANIZATION AFTER INCORPORATION

- A. *Organization Meeting*, 22
  - 1. *Place and Time*, 22
  - 2. *Notice of Meeting*, 22
- B. *By-laws*, 22
  - 1. *In General*, 22
  - 2. *Method of Adoption*, 22

- 3. *Rules Governing Validity*, 23
- 4. *Enforcement*, 23
- 5. *Amendment and Repeal*, 23
- 6. *Operation*, 23

- C. *Election of Directors*, 23
- D. *Issue of Shares*, 23
- E. *Other Prerequisites*, 24

## **V. MANAGEMENT OF CORPORATION**

### **A. In General**, 24

### **B. Promoters**, 24

- 1. *Compensation for Services*, 24
- 2. *Liability of Corporation on Promoters' Contracts*, 24
- 3. *Promoters' Liability on Contracts*, 25
- 4. *Promoters' Liability to Corporation*, 25
  - a) *In General*, 25
  - b) *Dealings with the Corporation*, 25
  - c) *Secret Profits*, 26

### **C. Directors**, 26

- 1. *Nature of Position*, 26
- 2. *Selection*, 26
- 3. *Number*, 26
- 4. *Qualification*, 26
- 5. *Term of Office : Resignation and Removal*, 27
- 6. *Powers*, 27
  - a) *In General*, 27
  - b) *Particular Powers*, 28
  - c) *Manner of Exercise of Powers*, 28
    - 1. *Directors' Meetings*, 28
      - a) *In General*, 28
      - b) *Notice*, 28
      - c) *Quorum*, 28
    - 2. *Action without a Meeting*, 28
    - 3. *Delegation of Duties*, 28
- 7. *Duties and Liabilities*, 29
  - a) *To the Company*, 29
  - b) *To Third Persons*, 29
  - c) *Criminal Liability*, 30
- 8. *Contracts and Dealings with Corporation*, 30
  - a) *In General*, 30
  - b) *Confirmation of Contracts*, 31
- 9. *Compensation*, 31
- 10. *Profits Arising from Office*, 31

### **D. Executive Officers**, 32

- 1. *Qualifications*, 32
- 2. *Appointment*, 32
- 3. *Powers and Liabilities*, 32
- 4. *Duties*, 33
- 5. *Compensation*, 33

## **VI. SHARES AND SHAREHOLDERS**

### **A. Membership in General**, 33

### **B. Nature of Shares**, 33

### **C. Acquisition of Shares**, 33

- 1. *Subscription*, 33
  - a) *In General*, 33
  - b) *Contract of Subscription*, 34
    - 1. *On Special Terms*, 34
    - 2. *Implied Conditions*, 34
    - 3. *Who may Subscribe*, 34
    - 4. *Subscription induced by Fraud*, 34
    - 5. *Conditional Subscription*, 35



- 6. *Oversubscription*, 35
- 7. *Operation of Contract of Subscription*, 35
- c) *Payment for Shares*, 35
  - 1. *Deposits*, 35
  - 2. *Calls*, 35
  - 3. *On Special Terms*, 36
    - a) *In General*, 36
    - b) *Other than Cash*, 36
  - d) *Persons Liable on Subscriptions*, 36
  - e) *Forfeiture*, 37
  - f) *Lien of Corporation on Shares*, 37
- 2. *Transfer*, 38
  - a) *Right of Transfer*, 38
  - b) *Mode of Transfer*, 38
    - Effect of Requirement of Registration*, 38
  - c) *Negotiability of Share Certificates*, 39
    - Estoppel*, 39
  - d) *Rights and Duties of Corporation*, 39
    - Estoppel against Corporation*, 39
- D. *Rights of Shareholders*, 40
  - 1. *In General*, 40
  - 2. *Right to Evidence of Membership*, 40
  - 3. *Right to Inspect Corporate Books and Papers*, 40
    - Remedy for Denial of Right*, 41
  - 4. *Right to Share in Conduct of Business*, 41
    - a) *In General*, 41
    - b) *Right to Vote*, 41
      - 1. *Who is Entitled to Vote*, 42
      - 2. *Proxies*, 43
        - a) *In General*, 43
        - b) *Authority of Agent under Proxy*, 43
        - c) *Expiration*, 43
        - d) *Revocation*, 43
    - 3. *Contracts Restricting Right to Vote*, 43
      - a) *In General*, 43
      - b) *Voting Trusts*, 44
  - 4. *Corporate Acts as to which Vote by Shareholders is Required*, 44
    - a) *In General*, 44
    - b) *Enumeration of Particular Acts*, 44
    - c) *Control over Board of Directors: Election, Classification, Change of Number*, 45
    - d) *Amendment of Corporate Charter*, 45
      - 1. *In General*, 45
      - 2. *Changes of Capital Stock*, 45
        - a) *In General*, 45
        - b) *Increase of Capital Stock*, 45
        - c) *Compliance with Statutes Permitting Increase*, 46
      - d) *Subscriptions for New Stock*, 46
        - 1. *In General*, 46
        - 2. *Right of Pre-emption*, 46
        - 3. *Remedies for Denial*, 47
        - 4. *Extent of Right*, 47
      - e) *Reduction of Capital Stock*, 47
        - 1. *In General*, 47
        - 2. *Methods*, 47
        - 3. *Effect*, 47
      - f) *Change of Par Value of Shares*, 48
      - g) *Issue of Preferred or other Special Classes of Shares*, 48
      - h) *Miscellaneous*, 48

- c) *Shareholders' Meeting, 49*
  - 1. *Necessity, 49*
  - 2. *Convening; Who may Call, 49*
  - 3. *Place, 49*
  - 4. *Time, 50*
  - 5. *Notice; Waiver of Notice, 50*
  - 6. *Quorum, 51*
  - 7. *Requisite Number of Assents, 51*
  - 8. *Conduct of Meeting, 51*
  - 9. *Adjourned and Postponed Meetings, 51*
  - 10. *Control by Court, 51*
- d) *Limitation on Individual Shareholder's Right to Vote, 52*
- 5. *Shareholder's Right to Deal with his Corporation, 52*
- 6. *Powers of Majority, 52*
  - a) *In General; Control of Corporation Business, 52*
  - b) *Amendment of Corporate Charter, 53*
  - c) *Limitations on Power of Majority, 53*
    - 1. *Statutory and Charter, 53*
    - 2. *Requirement of Good Faith, 53*
- 7. *Right to Invoke Judicial Intervention in Corporate Affairs, 54*
  - a) *In General, 54*
  - b) *Forum, 54*
  - c) *Cases in which Shareholder's Bill will be Allowed, 54*
    - 1. *In General, 54*
    - 2. *Ultra Vires Acts, 54*
      - a) *Injunction, 54*
      - b) *Setting Aside, 55*
  - 3. *Wrongs of Directors, 55*
    - a) *Necessity of Appeal to Corporation, 55*
    - b) *Right to Bill where Corporate Action Cannot be Secured, 55*
  - 4. *Wrongs by a Majority of Shareholders, 56*
    - a) *Necessity of Appeal to Corporation, 56*
    - b) *Right to Bill Where Corporate Action Cannot be Secured, 56*
  - 5. *Wrongs of Third Parties, 56*
  - 6. *Right of Intervention in Suits against Corporation, 56*
- d) *Who Entitled to Bring Shareholder's Bill, 57*
  - 1. *In General, 57*
  - 2. *Disqualifications, 57*
    - a) *Estoppel, 57*
    - b) *Subsequent Acquisition of Stock, 57*
      - 1. *In General, 57*
      - 2. *Rule in the Federal Courts, 58*
- e) *Parties to Shareholders' Bills, 58*
  - 1. *Plaintiffs, 58*
  - 2. *Defendants, 58*
- f) *Result of a Judgment or Decree, 58*
- 8. *Right to Dividend, 59*
  - a) *In General, 59*
  - b) *Declaration of Dividend; Powers and Duties of Directors, 59*
  - c) *Sources of Dividend, 59*
    - What are Net Profits, 60*
  - d) *Forms of Dividends, 60*
    - 1. *In General, 60*
    - 2. *Stock Dividends, 60*
    - 3. *Scrip Dividends, 61*
  - e) *Effect of Declaration of Dividend, 61*
  - f) *Who are Entitled to Dividends, 61*
    - 1. *In General, 61*
    - 2. *As against the Corporation, 62*
    - 3. *As between the Registered Holder and Third Parties, 62*

4. *As between Tenants for Life or for a Term of Years and Remaindermen*, 62
  - a) *In General*, 62
  - b) *Massachusetts rule*, 63
  - c) *Pennsylvania rule*, 63
  - d) *Other Rules*, 63
- g) *Liability on Receipt of Dividends*, 63
  1. *Directors' Liability*, 63
  2. *Shareholders' Liability*, 63
9. *Special Classes of Shares and Special Rights of Holders*, 64
  - a) *In General*, 64
  - b) *Preferred Shares*, 64
    1. *Creation*, 64
    2. *Rights and Liabilities of Preferred Shareholders*, 64
      - a) *In General ; Right to Dividends*, 64
      - b) *Rights in Distribution of Corporate Assets*, 65
      - c) *Rights to Vote*, 65

## VII. DISSOLUTION

- A. *In General*, 65
- B. *Modes of Dissolution*, 65
  1. *Repeal of Charter*, 65
  2. *Forfeiture of Corporate Franchise*, 66
    - a) *In General*, 66
    - b) *Grounds for Forfeiture*, 66
    - c) *Waiver of Forfeiture*, 67
    - d) *Proceedings to Secure Forfeiture*, 67
    - e) *Jurisdiction in Proceedings*, 67
  3. *Voluntary Surrender of Charter*, 68
    - a) *In General*, 68
    - b) *Who may act for the Corporation*, 68
    - c) *Statutory Provisions*, 68
  4. *Involuntary Dissolution brought about by Creditors or Shareholders*, 69
- C. *Effect of Dissolution*, 69
  1. *In General*, 69
  2. *On Powers of Corporation*, 69
  3. *On Property and Liabilities of the Corporation*, 69
  4. *On Suits by and against the Corporation*, 70
- D. *Winding-up Corporate Affairs after Dissolution*, 70
  1. *In General*, 70
  2. *Under Control of the Corporation or its Officers*, 70
  3. *By a Receiver*, 70

## VIII. EXTENSION OF CORPORATE EXISTENCE, 71

### IX. SUCCESSION, 71

- A. *Reorganization*, 72
- B. *Consolidation*, 72
  1. *In General*, 72
  2. *Power to Consolidate*, 72
  3. *Effects of Consolidation*, 72
    - a) *On Constituent Companies*, 72
    - b) *On Rights and Obligations of the Resultant Company*, 73
  4. *Quasi Consolidation*, 73
    - a) *Sale of Property for Shares in Second Corporation by one Corporation*, 73
    - b) *Acquisition of Shares in Second Corporation*, 74
      1. *Holding Companies*, 74
      2. *Friendly Agreements*, 74

### X. ACTIONS BY AND AGAINST CORPORATIONS

- A. *In General*, 74
- B. *Statutory Regulations*, 75
- C. *Proof of Incorporation*, 75

1. *In General*, 75
2. *Evidence to Prove Incorporation*, 75
  - a) *Direct Evidence*, 75
  - b) *Indirect Evidence*, 75
3. *Estoppel to Deny Incorporation*, 76

## **XI. RIGHTS OF CREDITORS OF A CORPORATION**

- A. *In General*, 76
- B. *Rights Against Transferees of Corporate Property*, 76
  1. *Transfers to Third Parties*, 76
  2. *Transfers to Directors or Shareholders*, 76
  3. *What Creditors can Object to Transfer*, 77
- C. *Insolvency as Affecting the Rights of Creditors*, 77
  1. *Assignments for Creditors*, 77
    - a) *Power to Make*, 77
    - b) *Effect*, 77
  2. *Preferences of Creditors*, 77
    - a) *In General*, 77
    - b) *Of Corporation's Own Officers*, 78
    - c) *Of Shareholders*, 78
- D. *Effect of the Sale of All the Corporate Property*, 78
- E. *Effect of Dissolution*, 78
- F. *Effect of Reorganization*, 78
- G. *Right of Set-off by Debtors to the Corporation*, 78
- H. *Creditors' Rights to Receiver*, 79
- I. *Creditors' Rights Against Shareholders*, 79
  1. *In General*, 79
  2. *To Enforce Payment of Subscriptions to Shares*, 80
    - a) *Bases*, 80
      1. *Trust Fund Theory*, 80
      2. *Fraud Theory*, 80
    - b) *Extent of Creditor's Right*, 80
    - c) *Defences Open to Shareholders*, 81
    - d) *Extent of Shareholders' Liability*, 81
    - e) *Remedies of Creditors*, 81
      1. *At Law*, 81
      2. *In Equity*, 82
  3. *Personal Liability of Shareholders under Statutes*, 82
    - a) *In General*, 82
    - b) *Extent*, 82
    - c) *Nature*, 83
      1. *Contractual or Penal*, 83
      2. *Principal or Surety*, 83
      3. *Joint or Several*, 83
      4. *Primary or Secondary*, 83
    - d) *Defences*, 84
    - e) *Who May Enforce*, 84
      1. *In General*, 84
      2. *Classes of Creditors*, 84
    - f) *Mode of Enforcement*, 85
    - g) *Enforcement in Other States*, 85
    - h) *Bars to Creditor's Right of Action*, 86
- J. *Rights of Creditors Against Directors and other Officers*, 86
  1. *In General*, 86
  2. *Under Statutes*, 87

## **XII. CORPORATE BONDS AND MORTGAGES, 87**

- A. *Corporate Bonds*, 87
  1. *Issue*, 87
    - a) *In General*, 87
    - b) *Issue at a Discount*, 87
  2. *Negotiability*, 88
    - a) *In General*, 88

- b) *Rights of Bona Fide Purchasers*, 88
    - c) *Who is a Bona Fide Purchaser*, 88
  - 3. *Transfers*, 89
  - 4. *Income — Coupons*, 89
    - a) *In General*, 89
    - b) *Suits on Coupons*, 89
  - 5. *The Principal — Maturity*, 90
- B. *The Security or Mortgage*, 90
  - 1. *In General*, 90
  - 2. *The Property Covered*, 90
  - 3. *The Trustee*, 91
  - 4. *Control of the Corporation over the Property Charged*, 91
  - 5. *Enforcement*, 91
    - a) *In General*, 91
    - b) *Appointment of Receiver*, 92
    - c) *Sale of the Property*, 92
  - 6. *Priority of Unsecured Creditors as a Result of Bondholders' Application for a Receiver*, 92

### **XIII. LEGISLATIVE CONTROL OVER DOMESTIC CORPORATIONS**

- A. *Under Power to Repeal Charters*, 92
- B. *Under Power to Alter or Amend Charters*, 93
- C. *Under Police Power*, 93
- D. *Under Power of Eminent Domain*, 94

### **XIV. TAXATION**

- A. *Power to Tax*, 94
  - 1. *In General*, 94
  - 2. *Restrictions on Power*, 95
    - a) *Under Federal Constitution*, 95
    - b) *Under State Constitutions and Statutes*, 95
  - 3. *Exemptions*, 95
  - 4. *Double Taxation*, 96
  - 5. *Taxation of Corporation Property*, 96
    - a) *Tangible Property*, 96
    - b) *Intangible Property*, 97
  - 6. *Taxation of Capital Stock*, 97
  - 7. *Taxation of Franchises*, 98
  - 8. *Taxation of Shares of Stock*, 99
    - a) *In General*, 99
    - b) *Place of Taxation*, 99
    - c) *Amount of Taxation*, 99
  - 9. *Privilege Tax on Foreign Corporations*, 99

### **XV. FOREIGN CORPORATIONS**

- A. *Introductory*, 100
- B. *Definition*, 100
- C. *Power to act Outside Chartering State*, 100
- D. *Right to act Outside Chartering State*, 101
  - 1. *Under rule of comity*, 101
    - a) *Comity — in general*, 101
    - b) *Limits*, 101
      - 1. *Organization of the Corporation in Good Faith*, 101
      - 2. *Control Over it by Law of the State into Which it is Admitted*, 101
  - 2. *Under Statutory Restrictions*, 102
    - a) *Power of a State to Impose Restrictions*, 102
      - 1. *In General*, 102
      - 2. *Constitutional Limitations on Power*, 102
        - a) *In General*, 102
        - b) *Corporations Engaged in Interstate Commerce*, 102
        - c) *Removal of Suits to Federal Courts*, 103
        - d) *Rights under the "Privileges and Immunities" Clause of the Federal Constitution*, 103



- e) *Rights to the Equal Protection of the Laws*, 103
  - f) *Rights Against Laws Impairing the Obligation of Contracts*, 104
- b) *Prescription of Terms of Admittance*, 104
  - 1. *In General*, 104
  - 2. *Statutory Requirements Analyzed*, 104
    - a) *Filing Information*, 104
    - b) *Obtaining State License — Fees and License Tax*, 105
  - 3. *What Corporations are Affected by the Terms — Meaning of the Phrase "doing business"*, 105
- E. *Action in Other States than the One of Charter*, 106
  - 1. *Doing Business*, 106
    - a) *Effect of Compliance with Terms of Admittance*, 106
    - b) *Effect of Non-Compliance*, 106
      - 1. *Penalties*, 106
      - 2. *Effect on Contracts Made on behalf of the Corporation*, 106
  - 2. *Dealing with Property*, 107
    - a) *Power in General*, 107
    - b) *Effect of Acquiring without Authority from the State*, 108
    - c) *Conveying*, 108
  - 3. *Bringing Suit in the State Courts*, 108
    - a) *In General*, 108
    - b) *Effect of Prohibitions Connected with the Requirements for Doing Business*, 108
    - c) *Other Limitations on the Right to Sue*, 109
    - d) *Procedure*, 109
  - 4. *Suits Against the Foreign Corporation*, 110
    - a) *In General*, 110
    - b) *Suits Requiring Personal Service on the Corporation*, 110
      - 1. *Statutory Provisions to Secure Jurisdiction*, 110
      - 2. *Service of Process*, 110
        - a) *Where No Agent has been Appointed by the Corporation*, 110
        - b) *Where the Corporation has Complied with the Statutory Provisions*, 111
        - c) *What Agents may be Served*, 111
      - 3. *Appearance and Representation by Attorney*, 111
      - 4. *Effect of Judgment*, 111
      - 5. *When the Corporation Ceases to be Suable*, 111
    - c) *Proceedings In Rem — Attachment, Garnishment*, 112
      - 1. *Proceedings In Rem — In General*, 112
      - 2. *Attachment*, 112
      - 3. *Garnishment*, 112
    - d) *Statutes of Limitation*, 113
    - e) *Suits by Non-Residents of the State*, 113
- F. *Domestication of Foreign Corporations*, 113
  - 1. *By Adoption*, 113
  - 2. *By Consolidation*, 114
- G. *Control by the State over a Foreign Corporation acting within it*, 114
  - 1. *Requiring Reports*, 114
  - 2. *Control by State Courts over Internal Affairs of the Corporation*, 114
    - a) *In General*, 114
    - b) *Intervention in the Management of the Corporate Business*, 115
      - 1. *In General*, 115
      - 2. *Limits of the Rule of Non-Interference*, 115
    - c) *Insolvency*, 115
    - d) *Dissolution*, 116
    - e) *Receiverships*, 116

**I. SCOPE OF THE ARTICLE.** — This article is an attempt to summarize the existing American law of business corporations strictly so called: that is, private corporations whose purpose is commerce, trade, or manufacturing. The special law applicable to other private corporations organized for profit, such as public service corporations, banks and other financial institutions, insurance companies, building and loan companies, and similar corporations, is not included. The statutory law as to banking corporations is separately treated in another article in these volumes.

As it was impossible within the space available even to make citations of the statutes of all the states, territories, and dependencies, a selection has been made which it is hoped may furnish a fair illustration of the existing American statute law<sup>1</sup>). The commercial and financial importance of New York, Pennsylvania, Massachusetts, and Illinois justifies their inclusion in this list. Massachusetts has a further claim in the modern character of its statutes, and Pennsylvania in the very complexity of its laws. Maine, Connecticut, Delaware, New Jersey, and West Virginia are typical incorporating states, and afford types of laws attractive to intending incorporators and illustrative of the liberality of treatment accorded business corporations in many American jurisdictions<sup>2</sup>). The group of North Central states — Michigan, Wisconsin, Minnesota — with Illinois illustrate the law of this large and wealthy section of the Union; California is typical of the western states, and Texas to some degree of the Southwest. Louisiana is not only of great commercial importance, but its laws are unique among American states. In the case of foreign corporations the list has been lengthened by the inclusion of other states and dependencies believed to be of special interest or importance to foreign corporations.

Effort has been made to illustrate the non-statute law by cases chosen in the main from the states selected for statutory illustration<sup>3</sup>).

In the treatment of the leading subdivisions of the subject, greater space has been devoted to such topics as the rights of creditors and the law of foreign corporations than to other topics probably less important to the constituency to which this work makes primary appeal.

**II. NATURE AND FORMATION OF A CORPORATION.** — **A. Definition.** — A commercial corporation in the eyes of the American courts is a legal person created by the cooperation of individuals, called corporators, and the state<sup>4</sup>). The corporators associate themselves together for a business purpose or purposes, and obtain from the state the privilege of incorporation under which they complete the work of a corporate organization.

**B. The Nature of a Corporation.** — The fact that in the United States the source of corporate power has invariably been a concession from the legislature granted to individuals has led some influential text-writers<sup>5</sup>) to seek to work out the legal rights and duties of corporations as inhering in the corporators only, and to dismiss the corporation itself as a mere fiction, or a symbol for the associates. One jurisdiction seems to follow this doctrine in its decisions<sup>6</sup>). A few other recent decisions suggest a tendency of some courts to work out cases where the organization of the corporation has been brought about to effect a fraudulent purpose<sup>7</sup>), or where the corporate form has been used as a cloak for the fraud of its members, by disregarding the corporation entirely<sup>8</sup>). In general, however, the American courts adhere to the orthodox conception of a corporation as a juristic person, an entity distinct

<sup>1</sup>) The citations of statutes are primarily illustrative; and though the attempt has been made to include all the provisions of the statute law of the states selected, the possibility of omission is so great that further search of the full text of the statutes will always be advisable. — <sup>2</sup>) Vide infra, II, D, II. — <sup>3</sup>) Many of the cases cited are cases in which the parties were other than business corporations; but the doctrines therein laid down are not peculiar to the particular type of corporation involved, and are equally applicable to business corporations. — <sup>4</sup>) Cf. Marshall, C. J., in *Dartmouth College v. Woodward*, (1819) 4 Wheat. 518,

636; Baldwin, C. J., in *Mackay v. New York & N. H. R. Co.*, (1909) 82 Conn. 73; La. Civ. Code, sec. 427. — <sup>5</sup>) Morawetz, *Private Corporations*, sec. 1, et passim; and cf. Taylor, *Private Corporations*, Chap. 1. — <sup>6</sup>) *Bank v. Trebein*, (1898) 59 Ohio St. 316; cf. *Cincinnati Volksblatt Co. v. Hoffmeister*, (1900) 62 Ohio St. 189, 200. — <sup>7</sup>) *Brundred v. Rice*, (1892) 49 Ohio St. 640; *United States v. Milwaukee, etc., Transit Co.*, (1905) 142 Fed. 247. — <sup>8</sup>) *In re Rieger*, (1908) 157 Fed. 609; and cf. *People v. North River Sugar Refining Co.*, (1890) 121 N. Y. 582.

from its members and having legal rights and duties of its own<sup>1</sup>). Thus the sole owner of all the corporate stock cannot convey by his deed the land held by the company<sup>2</sup>). A contract made with a corporation is not binding on the stockholders and officers of the corporation<sup>3</sup>). That all the stock in corporation A is owned by stockholders of corporation B and held for the benefit of corporation B will not make the latter liable for the debts of the former<sup>4</sup>).

**C. The Function of the State.** — 1. IN GENERAL. — Corporations in the United States are created only under legislative authority. They cannot be created by mere agreement of the associates<sup>5</sup>). The legislatures of the states have such power, and so also has the Congress of the United States within the restrictions of the Federal Constitution. Thus Congress can create corporations for the purpose of effecting any end within the powers reserved to the national government by that instrument<sup>6</sup>). As the legislature for the District of Columbia it can create corporations within that district. It has also power to create corporations within any territory. But it has delegated this power to the territorial legislatures, with the proviso that the legislatures shall create corporations only under general acts, and this delegation of power has been upheld<sup>7</sup>).

2. FORMS OF LEGISLATIVE AUTHORIZATION. The legislative authorization may be either in the form of a special charter, which is a direct grant by a legislature of corporate powers to a particular association, or in the form of a general incorporation law prescribing conditions on compliance with which any association may become a corporation. To-day in most states the grant of special charters to corporations is forbidden by constitutional provisions<sup>8</sup>). The only exceptions as regards business corporations are Connecticut, District of Columbia<sup>9</sup>), Massachusetts<sup>10</sup>), New Hampshire, Rhode Island and Vermont. In Connecticut business corporations are still not infrequently formed under special charters. Under general incorporation laws the charter of a corporation consists of the provisions of the general law and the articles of incorporation which are drawn up in accordance with these provisions. The general law prescribes conditions designed in the main to secure the recording and publication of the scheme of organization adopted by the incorporators.

**D. The Function of the Individual Organizers.** — 1. IN GENERAL. — The state does not compel business corporations to incorporate<sup>11</sup>). The charter of a private corporation is granted at the instance of individuals who have associated themselves to apply for it and who have complied with the conditions upon which under the state incorporation laws it will be granted. In organizing a business corporation certain preliminary steps have to be taken. The corporation project has to be financed, the terms under which it proposes to operate drafted, associates in the risk of the enterprise secured, and a charter obtained. This work is sometimes done wholly or in part by persons who may not become members of the corporation. All of those who participate in the work of launching the enterprise are called in the language of business "promoters." Those who associate themselves in securing the charter, and who become the first members of the corporation, are called "incorporators" or "corporators."

2. SELECTION OF A STATE OF INCORPORATION. It is not necessary that promoters or incorporators seek incorporation in their own state<sup>12</sup>). They

<sup>1</sup>) Cf. *Old Dominion Copper Co. v. Lewishorn*, (1907) 210 U. S. 206; *Ulmer v. Lime Rock R. Co.*, (1904) 98 Me. 579. — <sup>2</sup>) *Parker et al. v. Bethel Hotel Co.*, (1896) 96 Tenn. 255. — <sup>3</sup>) <sup>1</sup>*Donnell v. Herring-Hall-Marvin Safe Co.*, (1908) 208 U. S. 267. — <sup>4</sup>) The court of New York has said: "In no legal sense can the business of a corporation be said to be that of its individual shareholders. It is true that they have an interest in the business carried on, and an influence controlling its conduct; but they have created a legal entity to prosecute such business, make its contracts, and be responsible for its obligations, and that entity is alone responsible to persons dealing with it for the conduct of such business." *People v. American Bell Telephone Co.*, (1889) 117

N. Y. 241, 255. — <sup>5</sup>) *Stowe v. Flagg*, (1874) 72 Ill. 397. — <sup>6</sup>) *McCulloch v. Maryland*, (1819) 4 Wheat. 316; *Luxton v. North River Bridge Co.*, (1894) 153 U. S. 525. — <sup>7</sup>) *R. S. U. S.*, sec. 1889; *Kansas Pacific R. Co. v. Atchison T. & S. F. R. Co.*, (1884) 112 U. S. 414. — <sup>8</sup>) *Cal. Const.*, Art. XII, sec. 1; *Del. Const.*, Art. IX, sec. 1; *Ill. Const.*, Art. XI, sec. 1; *La. Const.*, Art. 275; *Mich. Const.*, Art. XII, sec. 1; *Minn. Const.*, Art. X, sec. 2; *N. J. Const.*, Art. IV, sec. 7; *N. Y. Const.*, Art. VIII, sec. 1; *Pa. Const.*, Art. III, sec. 7; *Tex. Const.*, Art. XII, sec. 2; *W. Va. Const.*, Art. XI, sec. 1; *Wis. Const.*, Art. XI, sec. 1. — <sup>9</sup>) Cf. *Code*, sec. 767. — <sup>10</sup>) Cf. *Const.* 1780, Part I, Art. 6, and *B. C. L.*, sec. 1. — <sup>11</sup>) *Ellis v. Marshall*, (1807) 2 Mass. 269. — <sup>12</sup>) *Vide XV, A, D.*

may in practice seek the state which will grant them a charter on the terms most propitious for their enterprise. A corporation may, although created in one state, receive authority from it to do business in other states. Although these latter states are not bound by Federal laws or interstate comity to admit the foreign corporation, yet in all the states as a matter of fact admission is granted on compliance with legislatively prescribed conditions usually not onerous to the company<sup>1</sup>). Owing to the fact that taxes on corporations are a lucrative source of income to the various state governments, what might not unfairly be called a rivalry between the states has arisen, in which certain ones have outbidden the others in a strife to secure incorporations within the state through the liberality in the terms of the acts prescribing the prerequisites of incorporation. Although the small business corporation will generally find it advantageous to obtain its charter from the state in which its business is to be done, and in which its principal incorporators live, the large corporation with large capital, extensive enterprise, or broadly inclusive aims, usually seeks one of the liberal states for its incorporation. Probably the leading incorporating states to-day are Arizona, Connecticut, District of Columbia, Maine, Massachusetts, Nevada, New Jersey, New York, Porto Rico, South Dakota, and West Virginia.

An authority on the subject of incorporation laws<sup>2</sup>) classifies the acts of the various states into groups of roughly similar statutes, as follows:

New Jersey, New York, Delaware, West Virginia, Alabama, Nevada, North Carolina, New Mexico, and Virginia form a first group, the acts in the other states being based on the features of the New Jersey act.

Colorado, North Dakota, Texas, Oklahoma, Idaho, Montana, Oregon, Washington, Utah, Wyoming, and Arizona follow the model set by California.

Maine, Massachusetts, Connecticut, Illinois, and Arkansas are alike in having the corporation organized before a certificate of incorporation or organization is filed with or issued by the state officials.

South Carolina, Florida, Mississippi, and Kansas bear some resemblance to Pennsylvania.

Michigan, Wisconsin, and Minnesota all have similar features. So also do Iowa and Nebraska. Kentucky, Ohio, New Hampshire, Rhode Island, and Vermont resemble each other. Georgia, Indiana, Louisiana, Maryland and Tennessee cannot be placed in any specified class.

Although, as has been suggested, the selection of a state of incorporation must depend in large measure on factors peculiar to the individual corporation, attention will be paid by persons seeking incorporation not only to the powers and immunities which can be secured under a given incorporation statute and to the costs involved both in the obtaining of the charter and in the continuing from year to year to do business under the tax laws of the state being investigated, but also to the policy of the state toward corporations, as shown by the frequency with which its corporation laws have been amended and the character of the changes which have been made in them.

States differ widely in the extent to which they permit incorporation for any purpose or number of purposes; in the restrictions they impose on capitalization and the issue of and payment for capital stock; in the liabilities, especially to creditors, they impose upon stockholders, and the penalties upon the corporation and the directors for failures in duty; in the facilities they grant for conducting business and the amount of publicity in corporate affairs they exact for the protection of the shareholders, the creditors of the corporation, the investing public, and the state. These and many other considerations important in the choice of a state of incorporation must be determined by a study of the statute and case law of the state. But the security of corporate tenure and privileges depends upon the conservatism of the state's future action, which is a political rather than a legal matter.

3. SELECTION OF LEGAL INCORPORATORS. Under general incorporation laws some restriction is frequently placed on the personnel of the applicants for the privilege of incorporation. A minimum number is usually set<sup>3</sup>), the sub-

<sup>1</sup>) Vide XV, D, 2. — <sup>2</sup>) Frost: Incorporation and Organization of Corporations, pp. 7, 8. —

<sup>3</sup>) Cal. Civ. Code, sec. 285; Conn. P. A. 1903, c. 194, sec. 62; Del. G. C. L., sec. 1; Ill. G. C. L., sec. 2; La. Act 78, Session 1904, p. 191;

Me. R. S., c. 47, sec. 6; Mass. B. C. L., sec. 7; Mich. C. A., sec. 1; Minn. R. L. of 1905, sec. 2849; N. J. C. A., sec. 6; N. Y. B. C. L., sec. 1; Pa. L. 1903, p. 272; Tex. R. S., Art. 644; W. Va. Code, c. 53, sec. 17; Wis. S., sec. 1771.

scription of one or more shares of stock is generally required<sup>1</sup>), and qualifications as to citizenship or residence of some or even all the applicants sometimes prescribed<sup>2</sup>). In the absence of express requirements these limitations will not be enforced<sup>3</sup>). It is sometimes expressly provided, and generally held even in the absence of such express provision, that the incorporators must be natural persons<sup>4</sup>). Regulations restricting the classes of persons who may act as incorporators are, however, in practice of small significance in the formation of corporations. The incorporators merely procure the charter for the future stockholders. The real projectors come in with the subscription for stock<sup>5</sup>). These subscribers are not restricted as to number — a corporation once validly organized does not lose its charter because all the stock comes into the hands of a single stockholder<sup>6</sup>). Stockholders may be aliens and may reside anywhere. They need not necessarily be natural persons, but may be corporations<sup>7</sup>).

**E. Drafting the Articles of Incorporation.** The application of the incorporators for a charter must be made to some officer of the state<sup>8</sup>), and the contents of this application are carefully prescribed. The most important preliminary stage in the formation of the corporation is the preparation of this document outlining the purposes and constitution of the proposed corporation. It must declare that the persons seeking incorporation have associated themselves for the purpose of forming a corporation under the general laws<sup>9</sup>). This document is variously known as articles of incorporation<sup>10</sup>), agreement of association<sup>11</sup>), certificate of organization<sup>12</sup>), certificate of incorporation<sup>13</sup>), etc., and corresponds in purpose and contents to the memorandum of association of the English Companies Act. It is as to its contents the most important of the constating instruments under which the corporation has its being. It is the contract between the nascent corporation and the state<sup>14</sup>), and also the contract between the persons associating themselves as members of the corporation.

**F. Contents of the articles.** — **I. IN GENERAL.** — The incorporation statutes usually prescribe with some minuteness the contents of the articles of incorporation<sup>15</sup>). In general the document must state a name for the proposed corporation, the precise location of the corporation's principal office or its principal place of business, or sometimes both, the purposes for which incorporation is sought — i. e. the business the corporation proposes to carry on and the powers it wishes to exercise, various facts about its capital stock, its management, and the term during which it proposes to operate. Many statutes permit the addition of special clauses in regulation or definition of the powers of the company and especially of its internal management<sup>16</sup>). Some give wider powers to insert additional provisions<sup>17</sup>). The things

<sup>1</sup>) Cal. cf. Civ. Code, sec. 290, amended L. 1907; Del. G. C. L., sec. 6; Me. R. S. C. 47, secs. 7 and 8; Mass. B. C. L., sec. 8; Mich. cf. C. A., sec. 2, amended Act No. 146 of 1907; N. J. C. A., sec. 8, par. 5; N. Y. B. C. L., sec. 2; W. Va. Civ. Code, c. 54, sec. 6. — <sup>2</sup>) Cal. Civ. Code, sec. 285; N. Y. G. C. L., sec. 4; P. L. 1903, p. 272; Tex. R. S. Art. 644; Wis. S., sec. 1771. — <sup>3</sup>) Central R. R. Co. of New Jersey v. Pennsylvania R. R. Co., (1879) 31 N. J. Eq. 475 Demarest v. Flack et al., (1891) 128 N. Y. 205. — <sup>4</sup>) N. Y. G. C. L., sec. 4; Central R. R. Co. v. Pennsylvania R. R. Co., supra; Factors and Traders Ins. Co. v. New Harbor, etc., Co. (1885) 37 La. Ann. 233. — <sup>5</sup>) Cf., however, Wechselberg v. Fleur City Natl. Bank, (1894) 64 Fed. 90, 97. — <sup>6</sup>) Geo. T. Staggs Co. v. E. H. Taylor, Jr., and Sons, (1902) 113 Ky. 709; Chase v. Telephone Co., (1899) 121 Mich. 631. — <sup>7</sup>) Vide VI, c. b, 3. — <sup>8</sup>) Vide II, G, 1. — <sup>9</sup>) In Massachusetts, Maine, and New Hampshire the preliminary agreement of association must be in writing. Mass. B. C. L., sec. 8; Me. R. S., c. 47, sec. 6; N. H. P. S., c. 147, sec. 2. In these states also some of the work of organizing the corporation must be done in a regularly called meeting of the associates prior to applying for the charter. Mass. B. C. L., secs. 9 and 10; Me. R. S., c. 47, sec. 7; amended Pub. Laws 1907, c. 86;

N. H. loc. cit., sec. 5. Cf. Ill. G. C. L., secs. 2, 3, 4; La. R. S. 1870, sec. 686. — <sup>10</sup>) Cal. Civ. Code, sec. 290. — <sup>11</sup>) Mass. B. C. L., sec. 8. — <sup>12</sup>) Me. R. S., c. 47, sec. 8. — <sup>13</sup>) N. J. C. A., § 8. — <sup>14</sup>) C. B. & Q. R. R. Co. v. Iowa, (1876) 94 U. S. 155, 161. — <sup>15</sup>) Cal. Civ. Code, sec. 290, amended L. 1907; Conn. P. A. 1903, c. 194, secs. 63, 64; Del. G. C. L., sec. 5; Ill. G. C. L., sec. 2; La. R. S. 1870, sec. 685; Me. R. S., c. 47, sec. 8; Mass. B. C. L., sec. 11; Mich. C. A., sec. 2, as amended by Act No. 146 of 1907; Minn. R. L., sec. 2849; N. J. C. A., sec. 7, sec. 8 as amended by P. L. 1898, p. 408; N. Y. B. C. L., sec. 2, and cf. G. C. L., secs. 10 and 37; Pa. Act of 1874, sec. 3; Tex. R. S., art. 643; W. Va. Code, c. 54, sec. 6; Wis. S., sec. 1772; L. 1909, c. 355; P. I. Corp. Law, sec. 6. — <sup>16</sup>) Conn. P. A. 1903, c. 194, sec. 64; Del. G. C. L., sec. 5 (8); Mich. C. A., sec. 2, as amended by Act No. 146 of 1907; Minn. R. L., sec. 2849; N. J. C. A., sec. 8, subsec. 7; N. Y. G. C. L., sec. 10, subd. 2; W. Va. Code, c. 54, sec. 6, subd. 7; Wis. S., sec. 1772, subsec. 7, L. 1909, c. 355. — <sup>17</sup>) Del. G. C. L., secs. 2, 9, 17—34; Mich. C. A., sec. 2, as amended by Act No. 146 of 1907; N. J. C. A., sec. 7; N. Y. S. C. L., secs. 25, 60; G. C. L., secs. 24, 37; Pa. Act of 1874, sec. 39, par. 1; Act of 1874, sec. 17; L. 1896, p. 32.

which must be set forth, though usually including those enumerated above, vary considerably from state to state. The provisions of the statutes are generally treated as mandatory<sup>1)</sup>, and failure to comply with them as leaving the corporation open to attack by the state or even by private individuals<sup>2)</sup>.

Some of the elements of the incorporation paper are important enough to call for separate consideration.

**2. THE CORPORATE NAME.** Every corporation must adopt a name<sup>3)</sup>. This name must not be fraudulent or misleading in effect<sup>4)</sup>. It must not unfairly resemble one already in use, at least one already legally recognized within the jurisdiction<sup>5)</sup>. The executive officer charged with granting registration to corporations may refuse to register an association proposing to adopt a name thus unfairly like one already registered. Statutes in some states settle the right to names as between foreign and domestic corporations<sup>6)</sup>. In the absence of statute, since a state may impose any terms on foreign corporations, it may deny them the right to use within its limits a name misleadingly similar to one borne by a domestic corporation<sup>7)</sup>. On the other hand if a foreign corporation has lawfully transacted business within a state it should be allowed to enjoin a later formed domestic corporation from using a misleadingly similar name<sup>8)</sup>.

Changes of name must be by legislative authority, usually provided by general statutes<sup>9)</sup>.

**3. PLACE OF BUSINESS.** — The public who have dealings with the corporation either in the way of business or through the courts; the state, especially for purposes of taxation; and shareholders, who should have convenient access to the corporate records and to meetings of the corporation, have all an interest in having a precise location fixed for the corporation's office or principal place of business. This is therefore a matter generally regulated by statutes covering both the fixing of the original location<sup>10)</sup> and methods of changing it<sup>11)</sup>.

**4. CORPORATE DURATION.** — The length of time during which the corporation is to exist should be stated<sup>12)</sup>. In those states in which a maximum limit

<sup>1)</sup> *People v. Selfridge*, (1877) 52 Cal. 331; cf. *Rhodes v. Piper*, (1872) 40 Ind. 369; —

<sup>2)</sup> *Williams v. Hewitt*, (1895) 47 La. Ann. 1076.

— <sup>3)</sup> This is practically everywhere prescribed in enumerations of what the articles must contain — vide *supra*, II, F, 1; and cf. *Scarsdale Pub. Co.*, etc., v. *Carter*, (1909) 116 N. Y. Supp. 731. — <sup>4)</sup> Cf. *von Thodorovich v. Franz Josef*, etc., Assn., (1907) 154 Fed. 911; and cf. note 3 *infra*; *La. Civ. Code*, sec. 432; *Tex. R. S.*, Art. 651 (1). — <sup>5)</sup> *Cal. Civ. Code*, sec. 296; *Conn. P. A.* 1903, c. 194, sec. 2; *P. A.* 1907, c. 155; *Del. G. C. L.*, sec. 5, par. 1; *Ill. G. C. L.*, sec. 2; *Minn. R. L.*, sec. 2849, subd. 1; *Gen. L.* 1909, c. 178; *N. J. C. A.*, sec. 8, par. 1; sec. 45; *Mass. B. C. L.*, sec. 5; *Me. P. L.* 1905, c. 171; *Mich. C. A.*, sec. 2, par. 1; *N. Y. G. C. L.*, secs. 5, 6; *P. L.*, sec. 666; *W. Va. Code*, e. 53, sec. 11; amended 1903 Acts, 3; *Wis. S.*, sec. 1772 (2); and cf. *Corning Glass Works v. Corning Cut Glass Co.*, (1910) 197 N. Y. 173. — <sup>6)</sup> *Ill. G. C. L.*, sec. 2; *Mass. B. C. L.*, sec. 5; cf. *Cal. Civ. Code*, sec. 296; *Conn. P. A.* 1903, c. 194, sec. 2; *P. A.* 1907, c. 155; *Del. G. C. L.*, sec. 5, par. 1. — <sup>7)</sup> Cf. *International Trust Co. v. International Land & Trust Co.*, (1891) 153 Mass. 271; *American Clay Mfg. Co. v. American Clay Mfg. Co.*, (1901) 198 Pa. St. 189. — <sup>8)</sup> *Philadelphia Trust*, etc., *Co. v. Philadelphia Trust Co.*, (1903) 123 Fed. 534; but cf. *Gresham, J.*, in *Lehigh Valley Coal Co. v. Hamblen*, (1885) 23 Fed. 225, and *Beale on Foreign Corporations*, sec. 231. — <sup>9)</sup> *Cal. C. C. P.*, secs. 1275—1279, and cf. *Civ. Code*, sec. 300, as amended *L.* 1909, c. 639, *Conn. P. A.* 1903, c. 194, secs. 73, 74; *Del. G. C. L.*, sec. 25, sec. 26 amended Apr.

5, 1909; *Ill. Act of Mar. 26, 1872*, and amendments July 1, 1903, secs. 1—7; *La. R. S.*, sec. 687; *Me. R. S.*, c. 47, sec. 47, as amended by *Pub. Laws* 1907, c. 154; *Pub. Laws* 1907, c. 61, sec. 1; *Mass. B. C. L.*, sec. 41; *Mich. C. A.*, sec. 17; *Minn. R. L.*, sec. 2871; *N. J. P. L.* 1898, p. 407; *C. A.*, sec. 27, amended *P. L.* 1908, p. 127; *N. Y. G. C. L.*, secs. 60—65; *Pa. L.* 1903, p. 251; *Tex. R. S.*, Arts. 641—650; *W. Va. Code*, e. 53, secs. 12—14; *Wis. S.*, sec. 1774, *L.* 1905, pp. 941—942. — <sup>10)</sup> *Cal. Const.*, Art. XII, sec. 8; *Civ. Code*, sec. 290 (3); *Conn. P. A.* 1903, c. 194, sec. 63 (2); *Del. G. C. L.*, secs. 29, 32, 33, and cf. sec. 5; *Ill. G. C. L.*, secs. 4, 7; *Act of May 10, 1901*, as amended, sec. 2; *Starr & Curt. St. V.*, p. 139; *La. Const. of 1898*, Art. 264; *R. S.*, secs. 740, 741; *Me. R. S.*, e. 47, sec. 20; *Mass. B. C. L.*, sec. 30; *Mich. C. A.*, sec. 2, par. 7; *Minn. R. L.*, sec. 2870; *N. J. C. A.*, sec. 8, sec. 33 as amended *P. L.* 1900, p. 13; *C. A.*, sec. 45; *N. Y. S. C. L.*, sec. 32; *Pa. L.* 1893, p. 355, *Act of 1894*, sec. 38, par. 7; *Tex. R. S.*, Art. 673; *Wis. S.*, secs. 1772, 1750; *L.* 1909, e. 355. — <sup>11)</sup> *Cal. Civ. Code*, sec. 321a, as amended *Mar. 20, 1903*; *Del. G. C. L.*, sec. 137, as amended 1907; *Ill. G. C. L.*, sec. 2; *Me. R. S.*, c. 47; sec. 52; *Mass. B. C. L.*, sec. 40; *Mich. C. A.*, sec. 18; *Minn. R. L.*, sec. 2871; *N. J. P. L.* 1897, p. 175; *N. Y. S. C. L.*, sec. 13; *Pa. L.* 1893, p. 355; *W. Va. Code*, c. 54, sec. 21 amended 1901 Acts 35, 1903 Acts 3; *Wis. S.*, sec. 1774; *L.* 1905, pp. 141, 142. — <sup>12)</sup> This is generally required by the statutes. See II, F, 1; and cf. *Hughes v. Antietam Mfg. Co.*, (1870) 34 Md. 316, and *Fairechild v. Masonic Hall Assn.*, etc., (1880) 71 Mo. 526.

is set for corporate life<sup>1)</sup>) a provision in the articles for a longer period or for perpetuity does not invalidate the instrument or prevent a corporation from being formed. The statutory limit is operative merely to terminate the corporate existence upon the limit being reached<sup>2)</sup>).

5. **FIRST DIRECTORS.** — Where the articles are required to state the number of directors the corporation will have, and the names of those chosen to act as a first board, this requirement is deemed mandatory<sup>3)</sup>).

6. **CORPORATE PURPOSE.** — The incorporators must state specifically the business in which they propose to engage. Some states expressly allow the enumeration of more than one business, even of businesses of different kinds<sup>4)</sup>. Most of the states permit it under a liberal construction of the wording of their statutes. A few expressly forbid corporations to engage in more than one business<sup>5)</sup>. Probably all would allow the enumeration of purposes obviously subsidiary to the corporation's main enterprise<sup>6)</sup>. A few states enumerate certain purposes for which they permit incorporation. In these states the purposes set forth in the articles of incorporators seeking a charter must be capable of classification under the permitted purposes<sup>7)</sup>. Most states permit incorporation for any lawful purpose or for any lawful purpose except certain specified ones<sup>8)</sup>. Sometimes a general act permits incorporation for any lawful purpose, and special provision is also made for incorporation for certain particular purposes. In such cases persons seeking incorporation for the special purposes cannot incorporate under the general act.

When the charter of the state is granted the associates, the objects they have enumerated for their corporation become, so far as they are consistent with the general law of the state, the expressly granted powers of the corporation<sup>9)</sup>. It is therefore important to the corporators that they secure ample enough powers to enable them successfully to prosecute their enterprise. On the other hand, the state is concerned to prevent illegal ends being pursued under cover of authority granted to the corporation.

*Corporations for an Unlawful Purpose.* A corporation to be valid must be within the purposes authorized by the statute; so if the purpose is unauthorized the corporation can have at most only a *de facto* existence<sup>10)</sup>. If the purpose is not only unauthorized but illegal — i. e. for ends *mala prohibita* or *mala in se* — and this illegal purpose appears on the face of the incorporation papers, not even *de facto* organization is effected<sup>11)</sup>. If, however, the purpose named is legitimate but the real purpose is unlawful, in order to protect innocent persons who may have become its stockholders or its creditors it will be recognized as a corporation<sup>12)</sup>, but liable to a forfeiture of its corporate privileges in an action by the state<sup>13)</sup>.

7. **PROVISIONS AS TO CAPITAL.** The amount of capital stock and the number of shares into which it is divided should be stated expressly in the articles<sup>14)</sup>.

<sup>1)</sup> Cal. Civ. Code, sec. 290 (fifty years); Ill. G. C. L., sec. 2 (ninety-nine years); La. R. S. 1870, sec. 684 (ninety-nine years); Mich. Const., Art. XII, sec. 3 (thirty years); Minn. R. L., sec. 2856 (thirty years); Tex. R. S., Arts. 643, 651; W. Va. Code, c. 54, sec. 11; amended 1901 Acts, 35; P. I. C. L., sec. 6 (4). There is no limit set by statute in the majority of the states, including Connecticut, Delaware, Maine, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin. — <sup>2)</sup> *People ex rel. Bernard v. Cheeseman*, (1884) 7 Colo. 376. — <sup>3)</sup> *Reed v. Richmond Street R. R. Co.*, (1875) 50 Ind. 342; *Dutchess etc. R. R. Co. v. Mabbett*, (1874) 58 N. Y. 397. — <sup>4)</sup> La. Act No. 78 of 1904, p. 191, sec. 1; N. J. C. A., sec. 6, amended P. L. 1899, p. 473, P. L. 1907, p. 35; N. Y. B. C. L., sec. 2a; W. Va. Code, c. 54, sec. 2. — <sup>5)</sup> Cf. Mich. C. A., secs. 36, 37; Pa. Laws 1901, p. 624; Tex. R. S., arts. 642, 642a, b, c, 650; and cf. *Johnston v. Townsend*, (Texas, 1910) 124 S. W. 417. — <sup>6)</sup> Cf. *People ex rel. Loy v. Mt. Shasta Mfg. Co.*, (1895) 107 Cal. 256. — <sup>7)</sup> *Clark v. American Cannel Coal Co.*, (1905)

35 Ind. App. 65. — <sup>8)</sup> Cal. Civ. Code, sec. 286; Conn. P. A. 1903, c. 194, sec. 62; Del. G. C. L., sec. 1; Ill. G. C. L., sec. 1; cf. *Imperial Building Co. v. Chicago Open Board of Trade*, (1909) 87 N. E. 167; La. Act 78 of 1904, p. 191; Me. R. S., c. 47, sec. 6; Mass. B. C. L., sec. 7, cf. sec. 1; Minn. R. L., secs. 2844, 2846, 3068, 3070; N. J. C. A. sec. 6; P. L. 1899, p. 473; P. L. 1907, p. 35; N. Y. B. C. L., sec. 2a; W. Va. Code, c. 54, sec. 2; Wis. S. sec. 1771. — Cf. *Northern Securities Co. v. United States*, (1904) 193 U. S. 197; *Vokes v. Eaton*, (1905) 119 Ky. 913; *In re Associated Lawyers' Co.*, (1909) 119 N. Y. Supp. 77. — <sup>9)</sup> On the general subject of corporate powers vide *infra*. — <sup>10)</sup> *Gillette v. Aurora Rys. Co.*, (1907) 228 Ill. 261. — <sup>11)</sup> *Detroit Schuetzen Bund v. Detroit Agitations Verein*, (1880) 44 Mich. 313. — <sup>12)</sup> *U. S. Vinegar Co. v. Foehrenbach*, (1895) 148 N. Y. 58. — <sup>13)</sup> *State v. Meramec Rod, etc., Club*, (1907) 98 S. W. 815 (Mo.). — <sup>14)</sup> Cf. *State v. Shelbyville, etc., Turnpike Co.*, (1872) 41 Ind. 151; Cal. Civ. Code, sec. 290 (6); Conn. P. A. 1903, c. 194, sec. 63 (4); Del. G. C. L., secs. 4, 5; cf. sec. 13;

Statutes often make additional requirements as to the kinds of stock to be issued<sup>1)</sup>, the amount of capital with which the corporation will commence business<sup>2)</sup>, the methods by which shares subscribed may be paid for<sup>3)</sup>, the amount actually subscribed prior to incorporation, and the persons by whom it has been subscribed<sup>4)</sup>.

**G. Procuring the Charter.** — 1. **SIGNING, ACKNOWLEDGING, AND RECORDING THE ARTICLES.** — The articles when drafted are usually required to be signed by the incorporators, or the minimum number of them required by statute<sup>5)</sup>. The instrument should then be acknowledged before a proper officer<sup>6)</sup>. It must, after this is done, be filed either in original or in copy, according to the statute of the particular jurisdiction, in the office or offices prescribed for registration<sup>7)</sup>. Sometimes it is required that the instrument be submitted to some officer for his approval either before or after registration, as a prerequisite to the issuance of the final certificate of incorporation<sup>8)</sup>.

2. **ORGANIZATION AND OTHER TAXES AND FEES.** — In addition to the execution and recording of the articles the payment of an organization tax in return for the state's grant of the privilege of incorporation is usually required as a condition precedent to corporate existence<sup>9)</sup>. Various other fees for filing and recording the articles must of course also be paid.

**H. When Corporate Existence begins.** In most states the existence of the corporation and its power to transact business date from the time of filing the articles with the registering officer or officers<sup>10)</sup>; in some from the issuance of a certificate that they have been so filed<sup>11)</sup>; in a few upon the completion of the work of organization by the members<sup>12)</sup>.

Ill. G. C. L., secs. 2, 7; La., Act No. 78, Session of 1904, p. 191, sec. 1; Me. R. S., c. 47, secs. 7, 8; Mass. B. C. L., secs. 8 (e), 11 (c); Mich. C. A., sec. 2, pars. 4 and 5; Minn. R. L., sec. 2849, par. 5; N. J. C. A., sec. 8, amended by P. L. 1898, p. 408, par. 4; N. Y. B. C. L., sec. 2 (4); Pa. Act of 1874, sec. 3 (7); L. 1889, p. 180, sec. 1; Act of 1874, sec. 39; L. 1889, p. 180 (3); Tex. R. S., sec. 643 (6); W. Va. Code, c. 54, sec. 6 (4); Wis. S., sec. 1772; P. I. Corp. Law, sec. 6 (7).

<sup>1)</sup> Cal. Civ. Code, sec. 290 (6); Conn. P. A. 1903, c. 19, sec. 63 (4); Del. G. C. L., sec. 13; Mass. B. C. L., sec. 8e, sec. 27; Mich. C. A., sec. 2, par. 4; sec. 35; Minn. R. L., sec. 2849 (5); N. J. C. A., sec. 8, par. 4; N. Y. B. C. L., sec. 2 (3); W. Va. Code, c. 54, sec. 6 (4); Wis. cf. S., sec. 1759a; L. 1907, p. 415. — <sup>2)</sup> Conn. P. A. 1903, c. 194, sec. 63 (5); Del. G. C. L., sec. 5 (4); cf. Ill. G. C. L., sec. 4; Me. R. S., c. 47, sec. 8; Mass. B. C. L., sec. 11c; Mich. C. A., sec. 2 (6); N. J. C. A., sec. 8; N. Y. B. C. L., sec. 2 (4). — <sup>3)</sup> Mass. B. C. L., sec. 11c; Mich. C. A., sec. 2, subd. 6; N. Y. cf. S. C. L., sec. 60; Pa. Act of 1874, sec. 17; L. 1876, p. 32. — <sup>4)</sup> Cal. Civ. Code, sec. 290 (7); La. cf. R. S. 1870, sec. 685; Me. R. S., c. 47, sec. 8; Mass. B. C. L., sec. 11a, sec. 8h; Mich. C. A., sec. 2, subd. 9; N. J. C. A., sec. 7 (5); N. Y. B. C. L., sec. 2 (9); Pa. Act of 1874, sec. 3 (5); P. I. C. L., sec. 6 (8). — <sup>5)</sup> Cf. *People ex rel Weatherly v. Golden Gate Lodge*, (1900) 128 Cal. 257. Cal. Civ. Code, sec. 292; Conn. P. A. 1903, c. 194, sec. 60; Del. G. C. L., sec. 6; Ill. G. C. L., sec. 2; Me. R. S., c. 47 sec. 8; Mich. C. A., sec. 2, as amended by Act No. 146 of 1907; Minn. R. L., sec. 2849; N. J. C. A., sec. 8, as amended by P. L. 1898, p. 408; N. Y. G. C. L., sec. 4; Pa. Act of 1874, sec. 3; L. 1903, p. 272; W. Va. Code, c. 54, sec. 6; P. I. Corp. Law, sec. 7, as amended May 21, 1908; Act No. 1834. — <sup>6)</sup> Cal. Civ. Code, sec. 296; Conn. P. A. 1903, c. 194, sec. 60; Gen. Stats. 1902, sec. 4794; Del. G.

C. L., sec. 6; R. S., c. 83, secs. 3, 10, as amended by 13 Del. Laws, c. 28, 18 Del. Laws, c. 212, and 17 Del. Laws, c. 212; Ill. G. C. L., sec. 2, 1 Starr & Curt. St., p. 932; Mich. C. A., sec. 2, as amended by Act No. 146 of 1907; Minn. R. L., sec. 2849; N. J. C. A., sec. 9; N. Y. Real Property Law, sec. 298 et seq.; Pa. L. 1903, p. 272; W. Va. Code, c. 54, sec. 9; P. I. Corp. Law, sec. 7, as amended May 21, 1908; Act No. 1834. — <sup>7)</sup> Cal. Civ. Code, sec. 296; Conn. P. A. 1903, c. 194, sec. 60; Del. G. C. L., sec. 6; Ill. G. C. L., sec. 2; La. L. 1898, Act 59, sec. 1; Me. R. S., c. 47, sec. 8; Mass. B. C. L., sec. 12; Mich. C. A., sec. 9; Minn. R. L., sec. 2850; N. J. C. A., sec. 9; N. Y. G. C. L., sec. 5, subd. 2; W. Va. Code, c. 54, sec. 20; P. I. Corp. Law, secs. 6, 11. — <sup>8)</sup> Conn. P. A. 1903, c. 194, sec. 60; Me. R. S., c. 47, sec. 8; Mass. B. C. L., sec. 12; Minn. R. L., sec. 2850; Pa. Act of 1874, sec. 3. — <sup>9)</sup> Cal. cf. Pol. Code, sec. 416; Conn. P. A. 1903, c. 194, sec. 61; Ill. Laws of 1903, p. 166; Me. R. S., c. 47, sec. 8; Mass. Amended Laws 1907, c. 396, sec. 88; Mich. Act 182, P. A. 1891, as amended, sec. 1; cf. for foreign corporations Act 206, P. A. 1901; Minn. R. L., sec. 2873, amended L. 1909, c. 202; N. J. C. A., sec. 114; N. Y. Tax Law, sec. 180; Pa. L. 1899, p. 189; Tex. R. S., Art. 2439, amended Acts 1909, p. 226; W. Va. Code, c. 32, sec. 129; Acts 1905, c. 36, sec. 129; Acts 1907, c. 16; Wis. S., sec. 1772; L. 1909, c. 355. In general the statutory provisions relating to fees have not been reprinted herein. — <sup>10)</sup> Cf. Del. G. C. L., sec. 7; Me. R. S., c. 47, sec. 10; Mass. B. C. L., sec. 12; cf. Mich. C. A. secs. 2, 9; Minn. R. L., secs. 2850, 2851; N. J. C. A., sec. 10; N. Y. G. C. L., sec. 11; Pa. Act of 1874, sec. 3; Tex. R. S., Art. 646; W. Va. Code, c. 54, sec. 11. — <sup>11)</sup> Cal. Civ. Code, sec. 296; Conn. P. A. 1903, c. 194, sec. 65; Wis. S., sec. 1772; L. 1907, p. 418; P. I. Corp. Law, sec. 11. — <sup>12)</sup> Ill. G. C. L., sec. 4; cf. sec. 2.



**I. Irregularities in Compliance with the Statute. — 1. CORPORATIONS DE JURE.** — A corporation which has complied with the conditions set out in the statutes is a corporation *de jure*, and in all respects entitled to act as a corporation having the powers legally given it in its incorporation papers. Even if the compliance is not exact, if it is substantial it will be sufficient<sup>1</sup>). Some courts are stricter than others in defining substantial compliance. Not all conditions in the statute are necessarily mandatory conditions precedent, and if they are only directory<sup>2</sup>), or are really conditions subsequent, they do not interfere with the *de jure* existence of the corporation<sup>3</sup>).

**2. CORPORATIONS DE FACTO.** — The associates, however, who have failed to comply precisely with the requirements of the statute may yet have achieved corporate capacities for some purposes. If a valid statute exists authorizing the formation of a corporation such as they seek to form; if they attempt to comply with the requirements for incorporation, and the attempt is made in good faith; and if it comes so near a complete compliance as to be entitled to be called a colorable one by the court; and if there has been a user of the corporate privileges under this attempt, then the American courts with few exceptions recognize the association as a so-called *de facto* corporation. Such a corporation can act as a conduit of title<sup>4</sup>). It can protect itself in the courts against tortfeasors<sup>5</sup>). It can enforce contracts made with it by persons who dealt with it as a corporation<sup>6</sup>). It cannot, however, compel a subscriber to pay for stock subscribed on its books unless he has otherwise treated it as a corporation *de jure*. It is liable as a corporation on its contracts<sup>7</sup>), and its members are not personally liable to those who contracted with the corporation<sup>8</sup>). On the other hand, of course, it has no rights of a corporation against the state, and may be ousted from its assumed powers by an appropriate action by the state, e. g. *quo warranto*<sup>9</sup>). Nor should it have the rights of a corporation against those who have not dealt with it, e. g. those injured by the torts of its agents in the course of corporate business<sup>10</sup>).

**3. FATALLY DEFECTIVE COMPLIANCE.** Even this limited corporate existence of a *de facto* corporation is predicated upon its fulfillment of the conditions specified above. If it falls short of this measure of compliance with the legal prerequisites to incorporation it is not a corporation at all, and its members are not protected by the corporate privileges of limited liability<sup>11</sup>).

But even these associations, so far short of regular organization as not to be regarded as *de facto* corporations, are not wholly without remedy on contracts made with them as corporations. In many states, where one who has contracted with the associates as a corporation seeks to avoid liability on his contract on the ground that they are not a corporation, his defense will not be allowed<sup>12</sup>). On the other hand, if the associates are sued as a corporation they will not be allowed to set up their lack of authority to act as a corporation<sup>13</sup>).

**4. STATUS OF DEFECTIVELY ORGANIZED CORPORATIONS OF AND THE ASSOCIATES THEREIN.** If *de facto* incorporation has been achieved, the

<sup>1</sup>) Mackay v. New York & N. H. R. Co., (1909) 82 Conn. 73; Carpenter v. Frazier, (1899) 102 Tenn. 462. — <sup>2</sup>) Newcomb v. Reed, (1866) 12 Allen (Mass.) 362; Shawnee Commercial, etc., Co. v. Miller, (1902) 24 Ohio Circ. Ct. 198. — <sup>3</sup>) Wells Co. v. Gastonia Co., (1905) 198 U. S. 177; McGinty v. Athol Co., (1892) 155 Mass. 183. — <sup>4</sup>) Hackensack Co. v. DeKay, (1883) 36 N. J. Eq. 548; Society Perun v. Cleveland, (1885) 43 Ohio St. 481. — <sup>5</sup>) Baltimore & Potomac R. v. Baptist Church, (1891) 137 U. S. 568. — <sup>6</sup>) Seven Star Grange v. Ferguson, (1903) 98 Me. 176; Commercial Bank v. Pfeiffer, (1888) 108 N. Y. 242, 248; Chase's Co. v. Boston Tow-boat Co., (1890) 152 Mass. 428. — <sup>7</sup>) Kelly v. Newburyport Co., (1886) 141 Mass. 496. — <sup>8</sup>) Vanneman v. Young, (1890) 52 N. J. L. 403; Whitney v. Wyman, (1879) 101 U. S. 392; cf. American Radiator Co. v. Kinnear, (1909) 56 Wash. 210. — <sup>9</sup>) Cf. Miller v. American Tobacco Co., (1898) 56 N.

J. Eq. 847, affirming s. c., (1897) 55 N. J. Eq. 352. — <sup>10</sup>) Cf. Vredenburg v. Behan, (1881) 33 La. Ann. 627. — <sup>11</sup>) Thus if the attempted compliance with the statute was not in good faith (Montgomery v. Forbes, [1889] 148 Mass. 249); if the law under which organization was attempted was unconstitutional (Eaton v. Walker, [1889] 76 Mich. 579), or did not authorize such a corporation as the incorporators assumed to form (Booth v. Wonderly, (1873) 36 N. J. L. 250; cf. also Imperial Building Co. v. Chicago Open Board of Trade, [1909] 238 Ill. 100); if the compliance fell so far short of the requirements of the statute as not to be deemed even colorable, as for example if no registration took place in any public office designated by law for the filing of such papers (Owen v. Shepard, [1894] 59 Fed. 746), no corporation, not even a *de facto* one, has been formed. — <sup>12</sup>) Winget v. Assn., (1889) 128 Ill. 67. — <sup>13</sup>) McCarthy v. Lavasche, (1878) 89 Ill. 270.

corporation has in general the status of a *de jure* corporation, except as against the state, e. g. in a direct proceeding by the state authorities to oust it of its corporate powers<sup>1</sup>), and as against subscribers to its stock, whom it cannot compel to pay calls on their shares<sup>2</sup>) unless they have participated in the attempt at incorporation or in subsequent acts of the company<sup>3</sup>). But otherwise their rights and powers are those of a *de jure* corporation<sup>4</sup>). Statutes frequently recognize this status of *de facto* corporations<sup>5</sup>). The associates in such corporations are not held to full individual liability<sup>6</sup>), but have only such individual liabilities as membership in a similar *de jure* corporation would impose on them. They cannot if sued on this liability set up the defective organization of the corporation as a defence<sup>7</sup>). Nor if the association is sued as a corporation can it make such a defence<sup>8</sup>).

If the association has not achieved even *de facto* organization, the associates are held in most jurisdictions to be liable individually on the contracts of the association<sup>9</sup>), usually on the theory that the association has constituted them partners<sup>10</sup>).

**III. CORPORATE POWERS. — A. In General.** — It is usually stated that a corporation has only such powers as its charter confers. But this includes more than what is directly expressed in that instrument or collection of instruments. It includes those powers which are incident to corporate existence, and those which are reasonably implied from and convenient to carry into effect the powers expressly granted<sup>11</sup>). These powers which are generally incident to corporate existence, and so are impliedly possessed by every business corporation except where specifically denied or limited, are: (1) to have perpetual succession; (2) to sue and be sued and to grant and receive by the corporate name; (3) to hold land and chattels; (4) to have a common seal, and to make by-laws<sup>12</sup>).

The express powers are those specifically enumerated in the constituting instruments, so far as these do not conflict with constitutional or statutory limitations. In most states the constituting instruments include the incorporation act and the articles drawn in conformity with it by the incorporators. Powers not authorized by the general law cannot, of course, be given the corporation by the enumeration of them in the articles, but modern statutes are generally liberal in the enumeration of powers which corporations may expressly assume<sup>13</sup>).

**B. Interpretation of the Enabling Statute.** — In interpreting the incorporation statute the courts will, of course, construe it most strongly in favor of the state. In interpreting the articles of association, however, they will construe the language neither strictly nor liberally, but with an attempt to give effect to the intent of the corporators according to the fair import of their words. General terms follow-

<sup>1</sup>) *Stockton v. American Tobacco Co.*, (1897) 55 N. J. Eq. 352, affirmed *Miller v. American Tobacco Co.*, (1898) 56 N. J. Eq. 847.

— <sup>2</sup>) *Indianapolis Furnace Co. v. Herkimer*, (1873) 46 Ind. 142; *Katama Land Co. v. Holley*, (1880) 129 Mass. 540. — <sup>3</sup>) *Hause v. Mannheim*, (1897) 67 Minn. 194; *Cayuga Co. v. Kyle*, (1876) 64 N. Y. 185. — <sup>4</sup>) *Society Perun v. Cleveland*, (1885) 43 Ohio St. 481; cf. *East Norway Lake Church v. Froislie*, (1887) 37 Minn. 447, and *Gray, J.*, in *Baltimore Co. v. Baptist Church*, (1890) 137 U. S. 568, 571. — <sup>5</sup>) Cal. Civ. Code, secs. 358, 363; cf. Conn. P. A. 1903, c. 194, sec. 60; Del. G. C. L., sec. 68; Ill. G. C. L., sec. 18; La. Revised Civ. Code, Art. 446; cf. Act No. 20 of 1904, Act No. 78 of 1904; *Homestead Co. v. Linigan*, (1894) 46 La. Ann. 1118; P. I. C. L., sec. 19. — <sup>6</sup>) *Snider's Sons Co. v. Troy*, (1890) 91 Ala. 224; *Finnegan v. Noerenberg*, (1893) 52 Minn. 239; cf. *Williams v. Hewitt*, (1895) 47 La. Ann. 1076. — <sup>7</sup>) *Slocum v. Warren*, (1871) 10 R. I. 116; cf. *Bushnell v. Consolidated Ice Co.*, (1891) 138 Ill. 67. — <sup>8</sup>) *Kelley v. Newburyport Co.*, (1886) 141 Mass. 496; *Callender v. Painesville Co.*, (1860) 11 Ohio St. 516; contra, *Boyce v. Townsontown Church*, (1876) 46 Md. 359. — <sup>9</sup>) *Davis v. Stevens*,

(1900) 104 Fed. 235; *Montgomery v. Forbes*, (1889) 148 Mass. 249. — <sup>10</sup>) This is expressly provided in Illinois (G. C. L., sec. 18). Some jurisdictions are contra (*Ward v. Brigham*, [1879] 127 Mass. 24), and some hold those members of the association who have directly authorized the making of the contract or have acquiesced in it so as to ratify it as principals (*Roberts Mfg. Co. v. Schlick*, [1895] 62 Minn. 332). But cf. *Johnson v. Corser*, (1885) 34 Minn. 355. — <sup>11</sup>) *State v. Hancock*, (1871) 35 N. J. L. 545. — <sup>12</sup>) See *Morawetz, on Corporations*, sec. 325. These powers to-day are usually expressly granted in the incorporation act. Cal. Civ. Code, sec. 354; Conn. P. A. 1903, c. 194, sec. 3; Del. G. C. L., sec. 2; Ill. G. C. L., sec. 5; La. R. S. 1870, sec. 684; Me. R. S., c. 47, sec. 46; Mass. B. C. L., sec. 4; Mich. C. A., sec. 13; Minn. R. L., sec. 2844; N. J. C. A., secs. 1, 2; N. Y. G. C. L., sec. 11; Pa. Act of 1874, sec. 1; Tex. R. S., Art. 651, as amended by Acts of 1909, p. 225; W. Va. Code, c. 52, sec. 1; Wis. S., sec. 1775; P. I. Corp. Law sec. 13. — <sup>13</sup>) Cf. Cal. Civ. Code, secs. 354, 355; N. Y. G. C. L., sec. 10; Tex. R. S., art. 665; W. Va. Code, c. 52, sec. 2; Wis. S., sec. 1767.

ing special terms will be restricted to things of the same character as those specially enumerated<sup>1</sup>). The express enumeration of certain points may be held to constitute an implied exclusion of others than those enumerated<sup>2</sup>).

**C. Special Powers.** In addition to the express powers, those powers reasonably necessary and convenient to the exercise of the express powers will be implied. Some of the leading implied powers will be briefly considered.

**1. TO TAKE AND HOLD PROPERTY.** Business corporations have implied power in the absence of statutory limitation to take and hold real or personal property for any purpose which is reasonably necessary or expedient in accomplishing the objects for which it was created<sup>3</sup>). Even when the duration of a corporation is limited the corporation can still take and convey a fee<sup>4</sup>). A corporation can act as lessee or lessor<sup>5</sup>), and can hold as tenant in common<sup>6</sup>), though not as a joint tenant.

**2. TO ACQUIRE SHARES IN OTHER CORPORATIONS.** A corporation may, unless prohibited by statute, provide as one of its expressed objects the acquisition of shares in other corporations<sup>7</sup>). It cannot, however, acquire for an illegal purpose or one opposed to public policy, e. g. with a view to establishing a monopoly<sup>8</sup>). If the acquisition is to secure the payment of a debt it will be allowed even without express provision<sup>9</sup>), and a statutory provision is not intended to prevent this<sup>10</sup>). In other cases, however, this power will not be implied<sup>11</sup>).

**3. TO ACQUIRE ITS OWN SHARES.** The better view is that a corporation cannot<sup>12</sup>), except by way of payment of a debt or security for such payment<sup>13</sup>), or by way of forfeiture<sup>14</sup>) or gift<sup>15</sup>), acquire its own shares unless power is given by statute<sup>16</sup>). Most American jurisdictions, however, even without a statute, permit a corporation to buy its own shares<sup>17</sup>), some permit such purchase only out of corporate profits<sup>18</sup>), and some when the acquisition is shown not to be harmful to creditors of the corporation or any of its shareholders<sup>19</sup>). In any event a corporation cannot vote in respect of its own stock, however acquired<sup>20</sup>).

<sup>1</sup>) State v. International Investment Co., (1894) 88 Wis. 512. — <sup>2</sup>) Case v. Kelly, (1890) 133 U. S. 21; Life, etc., Ins. Co. v. Mechanic Fire Ins. Co., (1831) 7 Wend. 31. But cf. Brown v. Citizen's Ice, etc., Co., (1907) 66 Atl. 181 (N. J.); and Thatcher v. Consumers' Gas & Fuel Co., (1907) 66 Atl. 934. — <sup>3</sup>) Cal. Const., Art. XII, secs. 8, 9; Civ. Code, secs. 354 (4), 360; Conn. P. A. 1903, c. 194, sec. 3 (4); Del. G. C. L., sec. 4 (4); Ill. G. C. L., secs. 5, 26, 1; cf. Imperial Bldg. Co. v. Chicago Open Board of Trade, (1909) 87 N. E. 167; La. R. S., 1870 sec. 684 (4) Me. R. S., c. 47, secs. 46, 48; Mass. B. C. L., sec. 4 (f); Mich. Const., Art. XII, sec. 5; C. A., sec. 14; Minn. R. L., sec. 2853 (4), 3235 et seq.; N. 1907, c. 439; N. J. C. A., sec. 1 (4); N. Y. G. C. L., sec. 11 (3); B. C. L., sec. 16; Pa. Act of 1874, sec. 1 (4); Const., Art. XVI, sec. 6; L. 1905, p. 27; L. 1909, p. 172; Tex. R. S., art. 651, as amended by the G. L. of 1907, p. 31; R. S. art. 749; Acts of 1897, p. 48; W. Va. Code, c. 52, secs. 1—3; amd. 1901 Acts, 35; Wis. S., sec. 1775 (6), 1775 (a); P. I. Corp. Law, sec. 13 (5). — <sup>4</sup>) Nicoll v. N. Y., etc., R. Co., (1854) 12 N. Y. 121. — <sup>5</sup>) Nye v. Storer, (1897) 168 Mass. 53. — <sup>6</sup>) DeWitt v. San Francisco, (1852) 2 Cal. 289. — <sup>7</sup>) Robotham v. Prudential Ins. Co., (1903) 64 N. J. Eq. 673. Conn. P. A. 1903, c. 194, sec. 11; Del. G. C. L., sec. 135; Me. R. S., c. 47, sec. 51; Minn. L. 1907, c. 293, sec. 3, as amended by L. 1909, c. 280; N. J. C. A., sec. 51; N. Y. S. C. L., sec. 55; cf. L. 1907, c. 429, secs. 54, 70; Pa. L. 1901, p. 603; W. Va. cf. Code, c. 52, sec. 3; amended 1901 Acts, c. 35; Wis. cf. S., sec. 1776a; L. 1905, p. 30. — <sup>8</sup>) Burrows v. Interborough Metropolitan Co., (1907) 156 Fed. 389. — <sup>9</sup>) National

Bank v. Case, (1878) 99 U. S. 628. — <sup>10</sup>) Holmes, etc., Mfg. Co. v. Holmes, etc., Metal Co., (1891) 127 N. Y. 252. — <sup>11</sup>) De La Vergne, etc., Co. v. German Saving Institution, (1899) 175 U. S. 40. — <sup>12</sup>) Hamor v. Taylor-Rice Engineering Co., (1897) 84 Fed. 392; San Luis Obispo Bank v. Wickersham, (1893) 99 Cal. 655; Crandall v. Lincoln, (1884) 52 Conn. 73. — <sup>13</sup>) First National Bank v. National Exchange Bank, (1875) 92 U. S. 122; Morgan v. Lewis, (1888) 46 Ohio St. 1. — <sup>14</sup>) Vide infra, VI, C, e. — <sup>15</sup>) Rivanna Nav. Co. v. Dawsons, (1846) 3 Gratt. (Va.) 19. — <sup>16</sup>) Cf. Cal. Civ. Code, secs. 332—349; Conn. P. A. 1903, c. 194, sec. 11; Del. G. C. L., sec. 19, as amended Mar. 26, 1909; Ill. Act of June 11, 1897, sec. 1; N. J. cf. C. A., sec. 29; N. Y. cf. S. C. L., sec. 28; City Bank of Columbus v. Bruce, (1858) 17 N. Y. 507; Pa. L. 1868, p. 50; Tex. cf. Howe Grain Co. v. Jones, (1899) 51 S. W. 24; W. Va. Code, c. 53, sec. 18; amended Acts 1901, c. 35; cf. Butler v. Beach (1909) 82 Conn. 417; and Berger v. U. S. Steel Corporation, (1902) 63 N. J. Eq. 809; cf. Oliver v. Rahway Ice Co., (1903) 64 N. J. Eq. 596; Moses v. Soule, (1909) 120 N. Y. Supp. 1136, affirming s. c., 118 N. Y. Supp. 410. — <sup>17</sup>) Burnes v. Burnes, (1905) 137 Fed. 781; Tierney v. Butler, (1909) 123 N. W. 213 (Ia.); Leonard v. Draper, (1905) 187 Mass. 536; Marvin v. Anderson, (1901) 111 Wis. 387. — <sup>18</sup>) Cf. Hamor v. Taylor Rice Engineering Co., (1897) 84 Fed. 392. — <sup>19</sup>) City Bank of Columbus v. Bruce, (1858) 17 N. Y. 507; and cf. Lake Superior Iron Co. v. Drexel, (1882) 90 N. Y. 87; Menefee v. Phelan, (1906) 140 Fed. 988, affirming *in re* Menefee, (1904) 132 Fed. 618. — <sup>20</sup>) N. J. C. A., sec. 38; W. Va., c. 53, sec. 18; amended Acts 1901, c. 35.

4. TO ALIENATE PROPERTY. The power to sell and convey property, real or personal, in the ordinary course of corporate business, is usually granted in statutes with the power to acquire and hold<sup>1)</sup>, and it will be implied even in the absence of an express grant. At common law neither the directors nor a majority of the shareholders of a corporation could sell the entire business of a prosperous, going corporation against a dissenting minority<sup>2)</sup>. But if the sale is for the purpose of acquiring another property or business<sup>3)</sup>, or if the corporation is in failing circumstances and the sale is for the purpose of securing or satisfying creditors<sup>4)</sup>, the minority cannot prevent it<sup>5)</sup>. Statutes in some states give to some specified proportion of the shareholders the power to alienate the property as an entirety even under other circumstances<sup>6)</sup>.

5. TO CONTRACT. — A corporation has power to make any contract expressly or impliedly authorized by its constituting instruments. This includes all such contracts as are necessary and usual in the course of its business as means to the attainment of its corporate purpose<sup>7)</sup>, but no others<sup>8)</sup>.

*Form of Corporate Contracts.* To-day, in the absence of statutory or charter restrictions, a corporation is required to use a seal in its contracts only where a power to contract debts extends to the limit of its credit<sup>9)</sup> except where it is restricted natural person would be so required<sup>10)</sup>. A seal is useful, however, as *prima facie* evidence of the authority of the agent affixing it to execute the contract or other instrument to which it is attached<sup>11)</sup>. Hence most statutes grant a corporation the power to adopt a corporate seal, and generally provide what may constitute such seal<sup>12)</sup>.

6. TO INCUR DEBTS AND BORROW MONEY. A corporation may purchase on credit whatever is reasonably necessary for its business, and is implied by statute<sup>13)</sup>. The power to create an indebtedness carries with it, in the case of a business corporation, the power to secure the indebtedness by mortgage<sup>14)</sup>, or to give written evidence of the debt in the form of bonds<sup>15)</sup>, promissory notes, or other negotiable instruments<sup>16)</sup>, issued by an agent with proper authority<sup>17)</sup>. The power to issue bonds and sometimes other instruments is in some states restricted by statute<sup>18)</sup>. The power to issue negotiable paper does not extend, without express grant of the power, to the execution, acceptance, or endorsement of accommodation paper, but if the corporation, having at all the power to issue negotiable paper, does issue an accommodation note, a person who is an innocent purchaser for value of the note

1) See note to III, C, 11. — 2) Hunt v. American Grocery Co., (1897) 81 Fed. 532, Parsons v. Tacoma Smelting Co., (1901) 25 Wash. 492; cf. Bartholomew v. Derby Rubber Co., (1897) 69 Conn. 521. — 3) Freeman v. Sea View Hotel, (1898) 57 N. J. Eq. 68. — 4) Phillips v. Providence Steam Engine Co., (1899) 21 R. I. 302. — 5) Under most modern incorporation acts allowing incorporation for any lawful purpose, there seems to be no reason why a private business corporation could not specify as one of its purposes the sale of its entire business; and if this specification were made the sale could be authorized by a majority of the stock or by the directors. Cf. Traer v. Lucas Prospecting Co., (1904) 124 Ia. 107. — 6) Cal. Civ. Code, sec. 361a; Me. cf. R. S., c. 47, secs. 56—67; Mass. B. C. L., secs. 40, 41; Mich. cf. Detroit v. Mutual Gas Light Co., (1880) 43 Mich. 594; N. Y. S. C. L., secs. 16, 17. — 7) Wright v. Hughes, (1889) 119 Ind. 324. Cf. note to II, F, 6. — 8) Holmes, Booth & Haydens v. Willard, (1890) 125 N. Y. 75; and vide infra III, D, 1, 2. — 9) B. S. Green Co. v. Blodgett, (1894) 55 Ill. App. 556. — 10) Andres v. Fry, (1896) 113 Cal. 124; In re West Jersey Traction Co., (1900) 59 N. J. Eq. 63. — 11) Cal. Civ. Code, sec. 354 (3); Conn. P. A. 1903, c. 194, sec. 3; Del. G. C. L., sec. 2; Ill. G. C. L., sec. 5; Me. R. S., c. 47,

sec. 46; c. 1, sec. 6 (17); Mass. R. L., c. 8, sec. 19; Stat. 1903, c. 437, sec. 4d; Mich. C. A., sec. 13; cf. Sarmiento v. Boat & Oar Co., (1895) 105 Mich. 300; Minn. R. L., sec. 2852; N. J. C. A., sec. 1 (3); N. Y. G. C. L., sec. 11; Genl. Construction Law, sec. 45; Pa. Act of 1874, sec. 1; Tex. R. S., Arts. 651, 676 as amended by G. L. of 1905, p. 230; R. S. 4862; W. Va. Code, c. 52, sec. 1; Wis. S., sec. 1748; L. 1905, p. 618; P. I. C. L., sec. 13. — 12) Barry v. Merchants' Ex., (1844) 1 Sandf. Ch. (N. Y.) 280. — 13) Ill. cf. G. C. L., sec. 16; Pa. cf. L. 1901, p. 3, secs. 2, 3; Tex. R. S., Art. 653. — 14) Wright v. Hughes, supra. Conn. P. A. 1903, c. 194, sec. 59; Del. G. C. L., sec. 3 (4); Me. R. S., c. 47, sec. 48; Mass. B. C. L., sec. 4; Wis. S., sec. 1748; L. 1905, p. 618. Mortgages may be given to secure future advances. Jones v. Guaranty Co., (1879) 101 U. S. 622. — 15) Barry v. Merchants' Ex., supra. — 16) Fidelity Trust Co. v. Louisville Gas Co., (1904) 81 S. W. 927. — 17) Bangs v. National Macaroni Co., (1897) 44 N. Y. Supp. 546. — 18) Cal. Const., Art. XII, sec. 11; Civ. Code, sec. 539, L. 1907; Conn. P. A. 1903, c. 194, sec. 59; N. J. cf. P. L. 1902, p. 217; N. Y. cf. S. C. L., secs. 6, 7; Pa. L. 1889, p. 257; P. I. C. L., sec. 17, as amended Act. No. 1895 (1909).

in the due course of business, before its maturity, can enforce payment against the corporation<sup>1</sup>).

7. TO ENTER INTO COMBINATIONS. Since a corporation must be governed solely by its own board of directors it has no implied power to become a partner<sup>2</sup>), and by parity of reasoning cannot enter into combination with other corporations to bring the several businesses under a single management other in whole or in part than the authorized board of directors of the company<sup>3</sup>). A corporation cannot enter into a consolidation with another company without an express grant of power<sup>4</sup>).

**D. Excess of Granted Powers: so-called Ultra Vires Acts.** — A corporation may do acts for which it has not been given authority by its constating instruments. All its acts are, of course, done by agents, and for torts of these agents it is liable where an individual employer would be<sup>5</sup>). Similarly, if the agent commits a crime in the course of his employment and with a view of benefiting the corporation, if the crime is one which consists in purposely doing a thing prohibited by statute, the corporation may be held criminally liable<sup>6</sup>). Corporations are liable for criminal libel and for contempt of court, and the reasoning of the courts in these cases might well be considered adequate to cover other crimes, even felonies committed by corporate agents in cases where a similar crime would make an individual employer liable<sup>7</sup>).

1. **ULTRA VIRES CONTRACTS.** — A contract made by a corporation through its agents which, though lawful for an individual to make, is outside the authority granted to the corporation, is usually spoken of as an ultra vires contract<sup>8</sup>). By this excess of its granted powers the corporation lays itself open to a forfeiture of the charter by the state. A dissenting stockholder, moreover, has certain remedies granted him in equity<sup>9</sup>). As between the parties to the contract, however, the American decisions leave the matter in great confusion. Generally speaking, if the contract has been fully performed on both sides neither party will be given the aid of the court to undo the transaction<sup>10</sup>). If, on the other hand, the contract is purely executory, it binds neither party. Either may withdraw and no action for damages or for specific performance will lie against him<sup>11</sup>). If, however, one party to the contract has performed his part of the contract, the majority of the state courts will not allow the other party, after having accepted the benefits of performance, to set up the unauthorized nature of the contract. Hence the contract can be enforced according to its terms<sup>12</sup>). Some courts, however, including the Federal courts, allow no action on the contract<sup>13</sup>), but permit a recovery in quasi contract of anything of value which the defendant has received from the plaintiff on account of the plaintiff's performance<sup>14</sup>).

2. **ILLEGAL AND PROHIBITED CONTRACTS.** — If the contract is not merely without authority but also illegal, it is governed by the ordinary rules as to illegal contracts. A contract which a corporation is by statute expressly prohibited from making may be made illegal in the strictest sense by the prohibition<sup>15</sup>), or merely void<sup>16</sup>) or ultra vires<sup>17</sup>), or even binding though subjecting the corporation to a penalty<sup>18</sup>). In interpreting the prohibition the court must ascertain by an examination of the whole statute what the exact intent of the legislature was in enacting it<sup>19</sup>).

<sup>1</sup>) *Monument National Bank v. Globe Works*, (1869) 101 Mass. 57. — <sup>2</sup>) *Whittenton Mills v. Upton*, (1858) 10 Gray, 582. — <sup>3</sup>) *People v. North River Sugar Refining Co.*, (1890) 121 N. Y. 582. — <sup>4</sup>) *Cole v. Millerton Iron Co.*, (1892) 133 N. Y. 164, and cf. *infra*, IX, B, 2. — <sup>5</sup>) *Lothrop v. Adams*, (1882) 133 Mass. 471. — <sup>6</sup>) *New York Central R. v. U. S.*, (1909) 212 U. S. 481. — <sup>7</sup>) But cf. *People v. Rochester Ry., etc., Co.*, (1909) 195 N. Y. 102. — <sup>8</sup>) Cf. *Bissell v. Michigan Southern, etc., R. R. Cos.*, (1860) 22 N. Y. 258 (Comstock, J.). — <sup>9</sup>) *Vide infra*, VI, D, 7. — <sup>10</sup>) *Long v. Georgia Ry. Co.*, (1891) 91 Ala. 519. — <sup>11</sup>) *Nassau Bank v. Jones et al.*, (1884) 95 N. Y. 115. — <sup>12</sup>) *Kelly v. Ning Young, etc., Assn.*, (1905) 84 Pac. 321; *Chapman v. Ironclad, etc., Co.*,

(1898) 62 N. J. L. 497; *Bath Gas Light Co v. Claffy*, (1896) 151 N. Y. 24; *Prescott Natl Bank v. Butler*, (1893) 157 Mass. 548. — <sup>13</sup>) *Brunswick Gaslight Co. v. United Gas Co.*, (1893) 85 Me. 532; *Natl. Home Building Assn. v. Home Savings Bank*, (1899) 181 Ill. 35; *Central Transportation Co. v. Pullman's, etc., Co.*, (1891) 139 U. S. 24. — <sup>14</sup>) *Pullman's, etc., Co. v. Central Transportation Co.*, (1898) 171 U. S. 138. — <sup>15</sup>) *Pittsburgh Construction Co. v. West Side, etc., R. R. Co.*, (1907) 154 Fed. 929; cf. *White v. Franklin Bank*, (1839) 22 Pick. 181. — <sup>16</sup>) *In re Mutual, etc., Ins. Co.*, (1899) 107 Ia. 143. — <sup>17</sup>) *White v. Franklin Bank*, *supra*. — <sup>18</sup>) *Thompson v. St. Nicholas Natl. Bank*, (1892) 146 U. S. 240. — <sup>19</sup>) *Dunlop v. Mercer*, (1907) 156 Fed. 545, 556.

**IV. ORGANIZATION AFTER INCORPORATION.** — As soon as the required preliminary steps have been taken and corporate existence has begun<sup>1)</sup>, the signers of the articles of incorporation constitute the company for the purpose of perfecting organization. Their usual tasks are the provision for an issue of shares and for payment for these shares, the adoption of by-laws for the corporation, and the election of directors and sometimes other officers<sup>2)</sup>. It is not infrequent, however, that the incorporators are required or allowed to nominate in the articles the first board of directors<sup>3)</sup>, and that this board takes over some or all of the tasks of completing the organization of the company<sup>4)</sup>.

**A. The Organization Meeting.** — **1. PLACE AND TIME.** — If, however, the signers of the paper have these duties to perform, they should act at a regularly convened meeting. This meeting should, in the absence of statutory permission to deviate from the common law rule, be held within the chartering state<sup>5)</sup>. But statutes not infrequently grant such permission<sup>6)</sup>, or grant to the incorporators power to participate in the meeting by proxy<sup>7)</sup>. Moreover the participants in a meeting held outside the state will be estopped from setting up its invalidity<sup>8)</sup>, and acts done at such a meeting can be validated by ratification at a meeting held within the state<sup>9)</sup>. The time of holding the meetings is usually fixed by statute, either directly<sup>10)</sup> or in some cases indirectly through a provision that the corporate franchises be forfeited unless corporate activities begin within a specified time<sup>11)</sup>.

**2. NOTICE OF MEETING.** — Proper notice of the time, place, and purpose of the meeting must be given<sup>12)</sup>, and by the proper convenor or convenors<sup>12)</sup>. Usually written notice is required, and if no period is set, a reasonable length of time must elapse between the notice and the meeting<sup>13)</sup>. Statutes ordinarily provide that the requirements as to notice may be waived by written waiver<sup>14)</sup>, and members who participate in the meeting or accept benefits from action taken there are estopped from disputing the binding character of such action<sup>15)</sup>.

**B. By-laws.** — **1. IN GENERAL.** — Since the articles usually contain only the merest outline of rules for the corporation's government, they have to be supplemented with fuller and more detailed regulations called by-laws; and the power to make these regulations is implied, even when not expressly granted, to business corporations<sup>16)</sup>.

**2. METHOD OF ADOPTION.** — Though in the absence of statutory requirement no formal adoption is necessary to give validity to a by-law<sup>17)</sup>, it is desirable in the interests of clearness to have the corporate regulations at the beginning of the corporate existence adopted by formal vote, reduced to writing, and recorded in a form acceptable to the shareholders. Statutory requirements to effect these

1) Vide II, H. — 2) Vide supra, IV, B. — 3) Vide supra, II, F, 5. — 4) Cf. Cal. Civ. Code, sec. 290 (5); Del. G. C. L., sec. 12; Ill. G. C. L., sec. 6; Minn. R. L., 2854; N. J. C. A., sec. 11; Tex. R. S., arts. 656, 657. — 5) Miller v. Ewer, (1847) 27 Me. 509; Bastian v. Modern Woodmen, (1897) 166 Ill. 595. This is expressly enacted into statute law in some states: cf. La. R. S., sec. 741; N. J. C. A., sec. 44. — 6) Del. G. C. L., sec. 30; Nev. G. C. L., sec. 12; N. D. Civ. Code, sec. 4520; Okla. R. S. 1903, sec. 1090; S. D. Civ. Code, sec. 786; W. Va. Code, c. 54, sec. 15; amended 1901 Acts, 35. Cf. Mich. C. A., sec. 20; Minn. R. L., sec. 3071; Pa. Act of 1874, sec. 38 (7); L. 1893, p. 355, sec. 1; W. Va. Code c. 54, sec. 23; amended 1901 Acts, 35. — 7) Cal. Civ. Code, sec. 321 (b); Conn. P. A. 1903, c. 194, sec. 68; Del. cf. G. C. L., sec. 17; Ill. cf. G. C. L., sec. 3; Me. cf. R. S., c. 47, sec. 17; Mich. C. A., sec. 10; Minn. R. L., sec. 2861; N. J. C. A., sec. 17 (as amended P. L. 1901, p. 260), sec. 36; N. Y. G. C. L., sec. 26; Pa. L. 1903, p. 14, sec. 1; W. Va. Code, c. 53, sec. 44; Wis. S., sec. 1760. — 8) Handley v. Stutz, (1891) 139 U. S. 417. — 9) Taylor v. Griswold, (1834) 14 N. J. L. 222. — 10) W. Va.

Code, c. 54, sec. 15; amended 1901 Acts, 35. — 11) Cal. Civ. Code, sec. 358; Conn. P. A. 1903, c. 267; P. A. 1909, c. 160; Del. G. C. L., sec. 67; Ill. G. C. L., sec. 4; Mich. C. L. 1897, sees. 8618, 8657, 9354 m; Minn. R. L., sec. 3174; N. Y. G. C. L., sec. 36; Pa. L. 1889, p. 241; Tex. G. L., sec. 4, p. 310, Acts of 1907; W. Va. Code, c. 53, sec. 6; amended 1901 Acts, 35; Wis. cf. S., sec. 1763. — 12) Conn. P. A. 1903, c. 194, sec. 67; Del. G. C. L., sec. 11; Ill. G. C. L., sec. 3; Me. R. S., c. 47, sec. 7; amended Publ. L. 1907, c. 86; Mass. G. C. L., sec. 9; Mich. C. A., sec. 3; Minn. R. L., sec. 2875; N. J. C. A., sec. 16; W. Va. Code, c. 54, sec. 15; Wis. S., sec. 1773; L. 1905, p. 490. — 13) Cf. Long Island R. R. Co., (1837) 19 Wend. (N. Y.) 37. — 14) Cal. Civ. Code, sec. 317, as amended by L. 1909, c. 58; Conn. P. A. 1903, c. 194, sec. 67; Del. G. C. L., sec. 11; Me. R. S., c. 47, sec. 7; amended P. L. 1907, c. 86; Mass. G. C. L., sec. 9; Mich. C. A., sec. 3; N. J. C. A., sec. 16. — 15) Handley v. Stutz, (1891) 139 U. S. 417. — 16) Vide III, A. Martin v. Nashville Building Assn., (1865) 2 Coldw. (Tenn.) 418. — 17) Masonic, etc., Assn. v. Severson, (1889) 71 Conn. 719.

ends are usual<sup>1</sup>). The power to adopt is usually in the shareholders<sup>2</sup>), but some statutes place it in the directors<sup>3</sup>). Even in such a case it would seem that the shareholders are able by a resolution duly passed in a regular meeting to override a by-law of the directors<sup>4</sup>).

**3. RULES GOVERNING VALIDITY OF BY-LAWS.** — By-laws must not conflict with the laws of the state<sup>5</sup>), nor with the articles of incorporation<sup>6</sup>). They must be reasonable; e. g. in their regulation of the mode of transfer of shares they must not operate unreasonably to restrain trade<sup>7</sup>) or alienation<sup>8</sup>). They must be general as to all within their sphere of operation<sup>9</sup>), and must be uniform and without arbitrary discrimination between those to whom they apply<sup>10</sup>).

**4. ENFORCEMENT.** — Power to punish violation of by-laws by fines, forfeitures, or other penalties is sometimes given by statute<sup>11</sup>). In the absence of statutory authority the existence of the power is doubtful<sup>12</sup>).

**5. AMENDMENT AND REPEAL.** — By-laws may be amended or repealed at any time by the power that enacted them<sup>13</sup>), so long as the amendment or repeal does not affect rights acquired under the by-law<sup>14</sup>).

**6. OPERATION OF BY-LAWS.** — By-laws operate only upon shareholders<sup>15</sup>). They give no rights to strangers<sup>16</sup>), nor are strangers held to have constructive notice of them. A contract made with a stranger by an officer whose power to make it was limited by the by-laws could still be enforced against the company by the stranger<sup>17</sup>) unless he had actual notice of the by-law affecting his contract<sup>18</sup>).

**C. Election of Directors.** — In a number of states the first directors are selected prior to incorporation and named in the articles<sup>19</sup>). In others, however, the first board is elected at the organization meeting<sup>20</sup>). There is no difference in power between these classes<sup>21</sup>). Once organization has progressed thus far, subsequent details are usually left in the hand of these directors<sup>22</sup>).

**D. Issue of Shares.** — As has been shown, most incorporation acts require the signers of the articles to be subscribers for shares in the corporation<sup>23</sup>). Where this is not required the signers have merely the function of organizing the corporation<sup>24</sup>). But in either case complete organization includes the issue of shares of stock and provision for their payment<sup>25</sup>). The very incorporation of the company constitutes those subscribers who are the signers of the articles shareholders, and entitles them

<sup>1</sup>) Cal. Civ. Code, secs. 301, 303, 304; Mass. B. C. L., sec. 9; Minn. R. L., secs. 2854, 2855; but cf. Natl. New Haven Bank v. Northwestern Guar. Loan Co., (1895) 61 Minn. 375, 395; Pa. Act of 1874, sec. 5; L. 1891, p. 61, sec. 1; W. Va. cf. Code, c. 54, sec. 15; amended 1901 Acts, 35; P. I. C. L., sec. 20. — <sup>2</sup>) Cal. Civ. Code, sec. 301; Del. G. C. L., sec. 12; Me. cf. R. S., c. 47, sec. 7, as amended by P. L. 1907, c. 86; Mass. cf. B. C. L., sec. 9; Minn. cf. R. L., sec. 2854; N. J. C. A., sec. 11; N. Y. G. C. L., sec. 34; Pa. Act of 1874, sec. 5; L. 1891, p. 61, sec. 1; W. Va. Code, c. 53, sec. 2; P. I. C. L., sec. 20. — <sup>3</sup>) Del. cf. G. C. L., sec. 12; Ill. G. C. L., sec. 6; Minn. R. L., sec. 2854; N. J. cf. C. A., 11; N. Y. cf. G. C. L., sec. 34. — <sup>4</sup>) Cf. Machen, Modern Law of Corporations, sec. 692. — <sup>5</sup>) Wells v. Black, (1897) 117 Cal. 157; Vercontere v. Golden State Land Co., (1897) 116 Cal. 410; Bornstein v. District Grand Lodge, (1906) 2 Cal. App. 624. — <sup>6</sup>) Bergman v. St. Paul, etc., Building Assn., (1882) 29 Minn. 275. — <sup>7</sup>) People v. Chicago Live Stock Exchange, (1897) 170 Ill. 556. — <sup>8</sup>) In re Klaus, (1886) 67 Wis. 401; Victor G. Bloede Co. v. Bloede, (1896) 84 Md. 129. — <sup>9</sup>) Ex parte Frank, (1878) 52 Cal. 606. — <sup>10</sup>) People v. Young Men's, etc., Society, (1879) 41 Mich. 67; People ex rel. Meier v. Throop, (1834) 12 Wend. (N. Y.) 181. — <sup>11</sup>) Cal. Civ. Code, sec. 303 (7); Del. G. C. L., sec. 2 (6); Ill. cf. G. C. L., sec. 7; Me. R. S., c. 47, sec. 47; N. J. C. A., sec. 1 (5); Pa. Act

of 1874, sec. 5; L. 1891, p. 61, sec. 1; Wis. S., sec. 1775 (5); P. I. C. L., sec. 21. — <sup>12</sup>) Shannon v. Howard Mut. Bldg. Assn., (1872) 36 Md. 383; March v. Fairmount Creamery Assn., (1907) 32 Pa. Super. 517. — <sup>13</sup>) Supreme Lodge v. Knight, (1889) 117 Ind. 489. — <sup>14</sup>) Kent v. Quicksilver Mining Co., (1879) 78 N. Y. 159; Covenant Mutual Life Assn. v. Kentner, (1900) 188 Ill. 431. — <sup>15</sup>) State v. Overton, (1854) 24 N. J. L., 435; Mechanics' etc. Bank v. Smith, (1821) 19 Johns. (N. Y.) 115. — <sup>16</sup>) Flint v. Pierce, (1868) 99 Mass. 68. — <sup>17</sup>) Lyndon Sav. Bank v. International Co., (1903) 75 Vt. 224. — <sup>18</sup>) Cannon v. Farmers' Mut. Fire Assn., (1899) 58 N. J. Eq. 102. — <sup>19</sup>) Cal. Civ. Code, sec. 290 (5); Me. cf. R. S., c. 47, sec. 7; Mass. cf. B. C. L., sec. 10; Minn. cf. R. L., sec. 2849 (4); N. Y. B. C. L., secs. 7, 8; Pa. Act of 1874, sec. 3 (6); Tex. R. S., sec. 643 (5); P. I. C. L., sec. 6 (6). — <sup>20</sup>) Conn. P. A. 1903, c. 194, secs. 67, 68; Del. G. C. L., sec. 30; Ill. G. C. L., sec. 3; N. J. C. A., sec. 34; W. Va. Code, c. 54, sec. 15; Wis. cf. S., sec. 1773. — <sup>21</sup>) Middleton v. Arastraville Mining Co., (1905) 146 Cal. 219; Hamilton Trust Co. v. Clemes, (1900) 163 N. Y. 423. — <sup>22</sup>) Vide infra V. C. 6, 7. — <sup>23</sup>) Vide supra, II, G. I. — <sup>24</sup>) Cf. Ill. G. C. L., secs. 2, 4. — <sup>25</sup>) So far as provision for payment on shares subscribed is not made by statutory requirements, it is almost universally left to the discretion of the directors. Vide infra, VI, C, 1, c.

to the shares for which they subscribed<sup>1</sup>). Other subscribers become entitled to shares only upon acceptance by the corporation of the offer to take shares constituted by their subscription<sup>2</sup>). In the absence of statutory requirement this acceptance need not be indicated in any formal way. The issue of a share certificate is not necessary to make the subscriber a shareholder<sup>3</sup>), nor is the entry of his name on the stock register of the company<sup>4</sup>). But statutes usually require the corporation to maintain such a register of shareholders<sup>5</sup>), and to issue them share certificates<sup>6</sup>).

**E. Other Prerequisites to the Right to Commence Business.** — In some states further steps than the performance of the acts prerequisite to corporate existence are required before a corporation can commence business. The most frequent of these is a payment of some part of a subscription on capital stock<sup>7</sup>).

**V. MANAGEMENT OF CORPORATIONS. — A. In General.** — The corporate enterprise engages the efforts of four classes of persons: the promoters who initiate it, the directors who mould its business policies, the officers who administer its affairs, and the stockholders, or in non-stock corporations the members who provide its original capital, and elect its managers, and for whose profit the corporate business is to be conducted.

**B. Promoters.** — **1. COMPENSATION FOR SERVICES TO THE CORPORATION.** — The persons who undertake and assist in the formation of a corporation are called its promoters. In their undertaking they may expend time, labor, and money for the benefit of the nascent corporation and enter into contracts with the same end in view. Unless, however, they make express provision in the articles for their repayment<sup>8</sup>), the corporation when formed is not liable *ipso facto* for these outlays and on these contracts. As to the time, services, and expenditures, it is generally held that the promoter is a mere volunteer, and takes his chances that the corporation when once formed will compensate him<sup>9</sup>). But in some jurisdictions the corporation is held liable in quasi-contract for the expenses of organization, to the extent of the benefits received by it<sup>10</sup>).

**2. LIABILITY OF THE CORPORATION ON CONTRACTS MADE BY PROMOTERS.** — The company to be formed cannot be held liable on contracts the promoter makes with third parties, for it is not yet in being, and so cannot be a party to the contract; and the promoter cannot be an agent for the corporation<sup>11</sup>). So also when the corporation comes into being it cannot ratify such a contract, since a ratification dates back to the time of making the contract, at which time the corporation was not yet in existence<sup>12</sup>). If, however, the corporation, after coming into being, is willing to adopt the contract, it may, according to the general American rule, do so, and the contract will be a valid one from the date of the adoption<sup>13</sup>). The contract made with the promoter by the third party is held by the courts, following this doctrine, to constitute a contract with the promoter and a continuing offer addressed to the company upon incorporation. Any act of the company communicated to the other party indicative of intention to accept this offer will com-

<sup>1</sup>) Cf. *Dancy v. Clark*, (1905) 24 App. D. C. 487. — <sup>2</sup>) *Bristol Creamery Co. v. Tilton*, (1899) 70 N. H. 239. — <sup>3</sup>) *Pacific Natl. Bank v. Eaton*, (1891) 141 U. S. 227; *San Joaquin, etc., Co. v. Beecher*, (1894) 101 Cal. 70. — <sup>4</sup>) *Manchester St. Ry. v. Williams*, (1902) 71 N. H. 312; cf. *Welch v. Gillelen*, (1905) 147 Cal. 571. — <sup>5</sup>) Cal. Civ. Code, sec. 378; Conn. P. A. 1903, c. 194, sec. 18; Del. G. C. L., sec. 29; La. Const., (1898) Art. 273; Mass. B. C. L., sec. 30; Mich. C. A., sec. 15; Minn. R. L., sec. 2869; N. J. cf. C. A., sec. 33, as amended P. L. 1898, p. 408; N. Y. S. C. L., sec. 32; Pa. L. 1849, p. 563, sec. 24; L. 1869, p. 71, sec. 1; Tex. R. S., art. 662; and see VI, C. 2, b. — <sup>6</sup>) Cal. Civ. Code, sec. 323, as amended March 18, 1907; Conn. P. A. 1903, c. 194, secs. 12, 15; Del. G. C. L., sec. 15; Me. R. S., c. 47, sec. 50; Mass. B. C. L., sec. 26; Minn. R. L., sec. 2879; N. J. C. A., sec. 19; N. Y. S. C. L., sec. 50; Pa. L. 1895, p. 258; W. Va. Code, c. 53, sec. 35; amended 1901 Acts, 35; P. I. C. L., sec. 35. — <sup>7</sup>) Conn. P. A. 1903, c. 194,

sec. 63; Del. G. C. L., sec. 5; Ill. G. C. L., sec. 4; La. Act No. 78 of 1904, p. 131, sec. 1; Mich. C. A., sec. 2 (6); Minn. R. L., sec. 2868; N. J. C. A., sec. 7 (4); N. Y. B. C. L., sec. 2; Pa. cf. L. 1883, p. 122, sec. 5; Tex. G. L., Acts of 1907, p. 309; R. S. 642 (56); W. Va. Code, c. 53, sec. 25; Wis. S., sec. 1773; L. 1905, p. 940; P. I. C. L., sec. 9, as amended Act No. 1834 (1908). — <sup>8</sup>) *Hawkeye Co. v. Bank*, (1907) 157 Fed. 253. — <sup>9</sup>) *Rockford, Rock Island etc. Co. v. Sage*, (1872) 65 Ill. 328. — <sup>10</sup>) *Taussig v. St. Louis, etc., R. Co.*, (1905) 186 Mo. 269; *Grier v. Hazard, Hazard & Co.*, (1891) 13 N. Y. Supp. 583. — <sup>11</sup>) *Gent v. Manufacturers' & Merchants' Mut. Ins. Co.*, (1883) 107 Ill. 652; *Munson v. Syracuse, etc., R. R. Co.*, (1886) 103 N. Y. 58; *Pennell v. Lothrop*, (1906) 191 Mass. 357. — <sup>12</sup>) *Koppel v. Massachusetts Brick Co.*, (1906) 192 Mass. 223; *McArthur v. Times Printing Co.*, (1892) 48 Minn. 319; *Whitney v. Wyman*, (1879) 101 U. S. 392, *contra*. — <sup>13</sup>) *McArthur v. Times Printing Co.*, *supra*.



plete the formation of a contract. This adoption need not be express, but may be implied from circumstances, such as the conduct of the company. If the company, with knowledge of the terms of the contract<sup>1</sup>), and knowledge that the promoter and third party intended the corporation to be bound<sup>2</sup>), should retain the benefits of the contract, this would be strong evidence of an intent to adopt it<sup>3</sup>). If, at the time the contract was entered into, the promoter did not intend to bind a corporation which he promoted, and which was incorporated subsequent to the contract, the corporation will not be bound by it. But the corporation may voluntarily assume such a contract by a proper novation after it has been formed<sup>4</sup>).

3. **PROMOTERS' LIABILITY ON CONTRACTS.** — If the promoter does not disclose the fact that he is acting for a corporation to be formed, he is liable on ordinary agency principles<sup>5</sup>). If the facts are disclosed, it is a question of fact for decision by the jury whether the promoter and the third party intended to contract on the basis of the promoter's personal responsibility. If the contract is in writing, and therefore the interpretation of the instrument a matter for the court, it will be construed to make the promoter liable unless there is evidence in the instrument of a different intention<sup>6</sup>). But the tendency is to hold the promoter liable on the contract<sup>7</sup>).

Promoters of a company are not ipso facto agents for each other, so that only those who have actual authority from their fellows can bind these latter<sup>8</sup>).

If the corporation adopts a contract after organization, this should discharge the promoter<sup>9</sup>). A fortiori, if a novation is established whereby the corporation is substituted in the place of the promoter, he will be discharged.

4. **LIABILITY OF PROMOTERS TO THE CORPORATION.** — *a) In General.* — Promoters are held to occupy a fiduciary relation to the corporation they have promoted. This imposes restrictions on their dealings with the corporation and with third parties for the corporation<sup>10</sup>). Transactions between the promoter and his corporation are *primâ facie* voidable, and to make them good the promoter must show that the corporation was fully informed as to the circumstances likely to affect its action<sup>11</sup>). A failure to make such disclosure entitles the corporation to rescind the contract, provided it acts promptly on discovery of the facts<sup>12</sup>). Moreover, the corporation is entitled to any secret profit made by the promoter out of his fiduciary relation, and this whether a profit is made from the corporation itself in a transaction between the promoter and the corporation, or from a transaction with a third party who is dealing with the corporation. The corporation may be unwilling to rescind its contract with the promoter. It may then elect to affirm the contract but to recover the promoter's profit<sup>13</sup>).

*b) Dealings with the Corporation.* — If the promoter has first promoted his corporation and then buys property for a re-sale to the corporation, the latter may treat the purchase as made for its benefit<sup>14</sup>). If, however, the promoter's purchase antedated his promotion of the company, he may sell to the company at a profit if he practises no fraud on the company<sup>15</sup>). He may not make actual misrepresentations as to the price he paid for the property or its relation to the price he is offering to sell it for<sup>16</sup>). But it is not clear that he is bound to disclose any facts

<sup>1</sup>) *Pitts v. Steele Mercantile Co.*, (1898) 75 Mo. App. 221. — <sup>2</sup>) *Fryber v. Girard Creamery, etc., Co.*, (1903) 67 Kans. 489. — <sup>3</sup>) *Bornmer v. American, etc., Hinge Mfg. Co.*, (1880) 81 N. Y. 468; *Schreyer v. Turner Flouring Co.*, (1896) 29 Oreg. 1. Massachusetts apparently does not recognize the continuing offer theory. In Massachusetts, to enable a corporation to hold the person who entered into a contract with the promoter, even though the promoter professed to be contracting for a company to be formed, a new contract after the company has been formed must be shown. *Penn Match Co. v. Hapgood*, (1886) 141 Mass. 145; and cf. *Abbott v. Hapgood*, (1889) 150 Mass. 248. The general American rule, however, is contra. — <sup>4</sup>) *Burke v. Lincoln-Valentine Co.*, (1899) 58 N. Y. Supp. 1077, 1121. — <sup>5</sup>) *Bank of Marshalltown v. Church Federation, etc.*, and *Allbrook*,

(1906) 129 Ia. 268. — <sup>6</sup>) *Durgin v. Smith*, (1903) 133 Mich. 331. — <sup>7</sup>) *Roberts Mfg. Co. v. Schlick*, (1895) 62 Minn. 332. — <sup>8</sup>) *Long v. Citizens' Bank*, (1892) 8 Utah, 104. — <sup>9</sup>) *Heckman's Estate*, (1896) 172 Pa. St. 185; *Whitney v. Wyman*, (1879) 101 U. S. 392; but cf. *American Paper-bag Co. v. Van Nortwick*, (1892) 52 Fed. 752. — <sup>10</sup>) *Plaquemines Tropical Fruit Co. v. Buck*, (1893) 52 N. J. Eq. 219. — <sup>11</sup>) *Rice's Appeal*, (1874) 79 Pa. St. 168, 204. — <sup>12</sup>) *Fred Macey Co. v. Macey*, (1906) 143 Mich. 138. — <sup>13</sup>) *Ex-Mission Land, etc., Co. v. Flash*, (1893) 97 Cal. 610; *Woodbury Heights Land Co. v. Loudenslager*, (1896) 55 N. J. Eq. 78. — <sup>14</sup>) *Burbank v. Dennis*, (1891) 101 Cal. 90. — <sup>15</sup>) *Milwaukee Cold Storage Co. v. Dexter*, (1898) 99 Wis. 214. — <sup>16</sup>) *Burbank v. Dennis*, *supra*; *Pittsburg Mining Co. v. Spooner*, (1889) 74 Wis. 307.

as to the price he paid for it or other circumstances likely to affect the company's action<sup>1</sup>). In the case where the promoter holds only an option before organizing the company, he cannot, after organizing it to take over the property, sell to it at a price greater than his option without disclosing the fact. If he does so, the company can recover the excess as secret profits<sup>2</sup>).

If the promoter discloses the facts concerning his connection with the property as to which he is dealing with the corporation, either to an independent board of directors — i. e. a board who are not so far the tools of the promoter as to be incapable of exercising an independent judgment — or to those who are stockholders of the corporation at the time of the negotiations, he will be protected against suits by the corporation as to the transaction<sup>3</sup>).

c) *Secret Profits.* — A promoter cannot retain any secret gift or commission given him by a party dealing with the corporation he has promoted<sup>4</sup>). It is immaterial whether or not the corporation has profited by the transaction<sup>5</sup>). The corporation can affirm the contract with the third party and recover the commission from the promoter if he has received it, or from the third party who promised it<sup>6</sup>).

**C. Directors.** — **I. NATURE OF POSITION.** — Those who manage at least the larger affairs of a corporation are called its directors, or sometimes its trustees. They are not, however, literally trustees, for they do not have legal title to the corporate property; nor even in every aspect of the relation, agents of the corporation, for they can act in good faith contrary to the wishes of the shareholders. Although their position has in it elements of both trusteeship and agency, it is on the whole *sui generis*<sup>7</sup>). The functions discharged by directors, and the incidents of the relation generally, are usually prescribed with much fullness by statutes, and by the articles and by-laws of the individual companies.

**2. SELECTION.** — As has been seen, the first directors are either selected by the incorporators prior to the final incorporation, or elected at the organization meeting<sup>8</sup>). Subsequent boards are normally elected by the stockholders. The power to choose these managers of the corporate business is one of the most important powers of shareholders, and will be considered in that connection<sup>9</sup>).

**3. NUMBER.** — Statutes usually prescribe a minimum<sup>10</sup>) and sometimes a maximum number for the board of directors<sup>11</sup>). The exact number within these limits is generally required to be set forth in the articles<sup>12</sup>), but sometimes is fixed by the by-laws. If fixed in the articles it can be changed only by a regularly adopted and recorded amendment to the articles<sup>13</sup>).

**4. QUALIFICATION.** — At common law no particular qualifications are required of directors. Aliens, women, and minors are directors in some American companies. Statutes, however, and by-laws may impose them. Usually a director is required to be a stockholder before he can act as director<sup>14</sup>), but he may qualify after being elected<sup>15</sup>). It is generally required that at least one member of the board of directors

<sup>1</sup>) *Dicta in Densmore Oil Co. v. Densmore*, (1870) 64 Pa. St. 43, and *Milwaukee Cold Storage Co. v. Dexter*, *supra*, are to the effect that such disclosure is not required. Cf. also *Ins. Press v. Montauk Wire Co.*, (1905) 93 N. Y. Supp. 134. — <sup>2</sup>) *Exter v. Sawyer*, (1898) 146 Mo. 302; *Yeiser v. U. S. Bond & Paper Co.*, (1901) 107 Fed. 340. — <sup>3</sup>) *Old Dominion Copper Co. v. Lewisohn*, (1908) 210 U. S. 206; *Garretson v. Pacific Crude Oil Co.*, (1905) 146 Cal. 184; and cf. *Hutchinson v. Simpson*, (1904) 87 N. Y. Supp. 369. — <sup>4</sup>) *The Telegraph v. Loetscher*, (1904) 127 Ia. 383, *Koster v. Pain*, (1899) 58 N. Y. Supp. 865. — <sup>5</sup>) *Yale Gas-stove Co. v. Wilcox*, (1894) 64 Conn. 101. — <sup>6</sup>) *Grand Rapids, etc., Co. v. Cincinnati, etc., Co.*, (1891) 45 Fed. 671. — <sup>7</sup>) Cf. *Bosworth v. Allen*, (1901) 168 N. Y. 157. — <sup>8</sup>) *Vide supra*, IV, C. — <sup>9</sup>) *Vide infra*, VI, D, 4. — <sup>10</sup>) Cal. Civ. Code, sec. 305, amended L. 1905; Conn. P. A. 1903, c. 194, sec. 10; Del. G. C. L., sec. 9; Ill. Act of May 22, 1877, sec. 1; Me. R. S.,

c. 47, sec. 7, as amended P. L. 1907, c. 86; Mass. B. C. L., sec. 17; Mich. C. A., sec. 4; Minn. R. L., sec. 2858; N. J. C. A., sec. 12; N. Y. B. C. L., sec. 2; L. 1901, p. 80; Tex. R. S., Art. 651, as amended G. L. 1907, p. 305; W. Va. cf. Code, c. 53, sec. 49; Wis. S., sec. 1772 (4); P. I. C. L., secs. 7 (6), 28. — <sup>11</sup>) Ill. cf. Act of May 22, 1877, sec. 1; Tex. R. S., Art. 651, as amended G. L. 1907, p. 305; W. Va. cf. Code, c. 53, sec. 49; P. I. C. L., secs. 7 (6), 28. — <sup>12</sup>) *Vide supra*, II, F, 5. — <sup>13</sup>) *Westchester Trust Co.*, (1906) 186 N. Y. 215. — <sup>14</sup>) Cal. Civ. Code, sec. 305, amended L. 1905; Conn. P. A. 1903, c. 194, sec. 10; Del. G. C. L., sec. 9; Ill. cf. *Fey v. Peoria Watch Co.*, (1889) 32 Ill. App. 618; Me. cf. R. S., c. 47, sec. 19; Mass. B. C. L., sec. 18; Mich. C. A., sec. 4; Minn. R. L., sec. 2858; N. J. C. A., secs. 12, 39; N. Y. cf. S. C. L., sec. 25; P. I. C. L., secs. 28, 30. — <sup>15</sup>) *Greenough v. Alabama G. S. R. Co.*, (1894) 64 Fed. 22.

shall be a resident of the state of incorporation<sup>1</sup>), and some statutes require citizenship of the state or of the United States as well as residence<sup>2</sup>).

To become a director a person elected must accept his office<sup>3</sup>), but he may do so by conduct, such as entering on the duties of his office<sup>4</sup>).

5. **TERM OF OFFICE: RESIGNATION AND REMOVAL.** — The length of directors' terms of office is usually fixed at one year or some other definite time<sup>5</sup>). However, the provision that they shall hold over until their successors are elected is frequently made, either by statute<sup>6</sup>) or by articles or by-laws. A director, however, may resign at any time<sup>7</sup>), so long as he acts in good faith<sup>8</sup>). Acceptance of the resignation by the board or the shareholders is not necessary<sup>9</sup>).

Where the directors hold office for a definite time they cannot be removed by the shareholders<sup>10</sup>), unless such power is reserved to the latter in the articles or by-laws<sup>11</sup>), or is granted by statute to some proportion of the stockholders<sup>12</sup>).

It is generally provided that interim vacancies caused by death, resignation, or otherwise, may be filled by the board itself<sup>13</sup>). In the absence of such provision the vacancy should be filled by an election by the shareholders<sup>14</sup>). Since action by a quorum of the board is valid, vacancies are sometimes left unfilled until the regular election<sup>15</sup>).

6. **POWERS.** — *a) In General.* — The directors have general power to conduct the corporation's business within the scope of its charter powers<sup>16</sup>). They may exercise any power granted to the corporation unless it has been expressly prohibited to them<sup>17</sup>). Moreover, the control of the directors is exclusive<sup>18</sup>). The shareholders, whether as individuals or collectively, cannot exercise the corporate powers<sup>19</sup>), or interfere with the exercise of these powers by the board<sup>20</sup>). The powers of the directors are, however, limited to the ordinary management of the business. They cannot do anything which would bring about a radical alteration of the corporate constitution. Thus they cannot increase the capital stock even where the corporation is authorized to do so<sup>21</sup>); nor can they exercise a power granted to the corporation to purchase its own shares<sup>22</sup>). Acts of these sorts require the explicit authorization of the shareholders.

<sup>1</sup>) Cal. cf. Civ. Code, sec. 305; Del. G. C. L., sec. 9; N. J. C. A., sec. 12; N. Y. G. C. L., sec. 34; Pa. L. 1887, p. 281; P. I. C. L., sec. 30. — <sup>2</sup>) Idaho Rev. Code, sec. 2728, as amended 1909, p. 158; Kans. Gen. Stats. 1899, secs. 1227, 1251; Laws 1901, c. 126; Mo. R. S., sec. 973; L. 1903, p. 124; Wash. I Ballington's Codes, sec. 4255. — <sup>3</sup>) Wright v. Natl. Bank, (1894) 52 N. J. Eq. 392; Bank of Mutual Redemption v. Hill, (1868) 56 Me. 385; Whittaker v. Amwell Natl. Bank, (1894) 52 N. J. Eq. 400. — <sup>4</sup>) Danville R. Co. v. Brown, (1893) 90 Va. 340, 342; cf. Minn. R. L., sec. 2858. — <sup>5</sup>) Cal. Civ. Code, sec. 390 (5); Conn. P. A. 1903, c. 194, sec. 10; Del. cf. G. C. L., sec. 9; Ill. G. C. L., sec. 3; Me. R. S., c. 47, sec. 15; Mass. B. C. L., sec. 18; Mich. P. A. 1885, No. 112, as amended P. A. 1907, No. 141; Minn. R. L., sec. 2860; N. J. C. A., sec. 12; N. Y. S. C. L., sec. 25; Pa. cf. L. 1887, p. 411; L. 1891, p. 61, sec. 1; W. Va., cf. Code, c. 53, sec. 49; Wis. S., sec. 1772 (4), 1776; P. I. C. L., sec. 29. — <sup>6</sup>) Conn. P. A. 1903, c. 194, secs. 10 and 24; Del. G. C. L., sec. 9; Me. R. S., c. 47, sec. 15; Mass. cf. B. C. L., sec. 18; Pa. L. 1891, p. 61, sec. 1; W. Va. Code, c. 53, sec. 49; Wis. S., sec. 1776; P. I. C. L., sec. 29. — <sup>7</sup>) Briggs v. Spaulding, (1890) 140 U. S. 132; and cf. Marlborough Assn. v. Peters, (1901) 179 Mass. 61. — <sup>8</sup>) Cf. Zeltner v. Zeltner Brewing Co., (1903) 174 N. Y. 247. — <sup>9</sup>) Fearing v. Clegg, (1896) 73 Fed. 116; International Bank v. Faber, (1898) 86 Fed. 443. — <sup>10</sup>) Powers v. Blue Grass Building Assn., (1898) 86 Fed. 705. — <sup>11</sup>) Cf. Wein-

burgh v. Union, etc., Advertising Co., (1897) 55 N. J. Eq. 640, and In re A. A. Griffing Iron Co., (1898) 63 N. J. L. 168. — <sup>12</sup>) Cal. Civ. Code, sec. 310; amended L. 1905; Ill. cf. G. C. L., sec. 6; Minn. cf. R. L., sec. 3171; W. Va. Code, c. 53, sec. 49; P. I. C. L., sec. 34. — <sup>13</sup>) Cal. Civ. Code, sec. 305; amended L. 1905; Conn. P. A. 1903, c. 194, sec. 10; Del. G. C. L., sec. 30; Ill. G. C. L., sec. 3; Me. cf. R. S., c. 47, sec. 47; Mass. cf. B. C. L., sec. 18; Mich. C. A., sec. 7; Minn. cf. R. L., sec. 3171 (5); N. J. C. A., sec. 15; cf. In re Griffing Iron Co., (1898) 63 N. J. L. 168; N. Y. cf. S. C. L., sec. 25; Pa. Act of 1874, sec. 9; Tex. R. S., art. 655; W. Va. Code, c. 53, sec. 49; Wis. S., sec. 1776; P. I. C. L., secs. 29, 34. — <sup>14</sup>) Syl- vania, etc., R. Co. v. Hoge, (1907) 59 S. E. 806; cf. Kearney v. Andrews, (1854) 10 N. J. Eq. 70; In re A. A. Griffing Iron Co., (1898) 63 N. J. L. 357, affirming s. e. 63 N. J. L. 168. — <sup>15</sup>) Porter v. Lassen County Land & Cattle Co., (1899) 127 Cal. 261. — <sup>16</sup>) Cf. Eastern R. Co. v. Boston & Maine R. R., (1872) 111 Mass. 125; Thayer v. Kinder, (1909) 89 N. E. 408. — <sup>17</sup>) Mahoney Mining Co. v. Anglo-California Bank, (1881) 104 U. S. 192. — <sup>18</sup>) McCullough v. Moss, (1846) 5 Denio (N. Y.) 567; Sellers v. Greer, (1898) 172 Ill. 549. — <sup>19</sup>) Gashwiler v. Willis, (1867) 33 Cal. 11; Colorado Springs Co. v. American Publishing Co., (1899) 97 Fed. 843. — <sup>20</sup>) Ellerman v. Chicago Junction R. Co., (1891) 49 N. J. Eq. 219. — <sup>21</sup>) Ry. Co. v. Allerton, (1873) 48 Wall. 233; Cass. v. Manchester Iron & Steel Co., (1881) 9 Fed. 640. — <sup>22</sup>) Hastings Lumber Co. v. Edwards, (1905) 188 Mass. 587.

*b) Particular Powers.* — The board of directors is usually the body that decides when capital stock shall be issued<sup>1)</sup>, and what shall be taken in payment for it<sup>2)</sup>. If property or services are taken, the bona fide judgment of the board as to the value of such property or services is usually to be deemed conclusive<sup>3)</sup>. They have power to call in unpaid subscriptions, limited only by statute or the express terms of the subscriptions<sup>4)</sup>. They declare dividends<sup>5)</sup>, make the corporate contracts<sup>6)</sup>, and bring suit or defend on behalf of the corporation<sup>7)</sup>. Usually they elect the officers of the company<sup>8)</sup> and appoint or dismiss its employees<sup>9)</sup>. They may make an assignment for the benefit of creditors if the company is insolvent<sup>10)</sup>, or formally acknowledge its insolvency for the purpose of having it adjudged a bankrupt<sup>11)</sup>.

**7. MANNER OF EXERCISE OF POWERS.** — *a) Directors' Meetings.* — 1. *In General.* — The directors can act for the company only when met as a board in lawful meeting<sup>12)</sup>. What constitutes a lawful meeting is usually carefully set out in statutes and elaborated in the by-laws<sup>13)</sup>. Such meetings should be held within the chartering state unless there is statutory permission to hold them elsewhere<sup>14)</sup>. The times of regular meetings are usually set out in the by-laws.

2. *Notice.* — Special meetings may be called by authorized persons for the transaction of some particular business<sup>15)</sup>. Of such meetings due notice must be given to each director<sup>16)</sup>. Notice should be sent even to directors outside the jurisdiction if it is practicable<sup>17)</sup>, but where the director is beyond possible reach the want of notice will be excused<sup>18)</sup>. The notice should state the time and place of meeting, and should be given sufficiently in advance of the time to allow a reasonable interval in which to reach the meeting<sup>19)</sup>. The notice need not specify the business to be considered at the meeting<sup>20)</sup>. Notice is presumed to have been regularly given, and want of it must be established by evidence<sup>21)</sup>.

3. *Quorum.* — In the absence of express provision to the contrary in the constituting instruments a majority of the directors constitute a quorum<sup>22)</sup>. Action with a less number than a quorum present will not be valid; a director cannot vote by proxy<sup>23)</sup>. A majority of the directors may act and bind the corporation<sup>24)</sup>.

*b) Action without a Meeting.* — The directors must act as a board<sup>25)</sup>, and action by a majority<sup>26)</sup>, or even, according to the preponderance of American authority, by the whole board<sup>27)</sup> without a meeting is invalid.

*c) Delegation of Duties by Directors.* — Statutes or the articles or by-laws of the corporation frequently give to directors the power to delegate their duty of

1) Vide VI, C, 1. — 2) Vide VI, C, 1, c. — 3) Vide VI, C, 1, c, 3, b. — 4) Vide VI, C, 1, c, 2, 3. — 5) Vide VI, D, 8, b. — 6) Vide III, C, 5; XII, A, 1. — 7) Vide X, A. — 8) Vide V, D, 2. — 9) Ibid. — 10) Vide XI, c. — 11) Vide article on Bankruptcy. — 12) *Jeanerette Rice & Milling Co. v. Durscher*, (1909) 123 La. 160; *Peirce v. Morse-Oliver Building Co.*, (1900) 94 Me. 406; *Sturndorf v. Samurai Co.*, (1910) 121 N. Y. Supp. 217; *Audenreid v. East Coast Milling Co.*, (1904) 68 N. J. Eq. 450; cf. *Winer v. Bank of Blytheville*, (1909) 89 Ark. 435. — 13) Cal. Civ. Code, secs. 308, 319; Conn. P. A. 1903, c. 194, sec. 3 (6); Mass. B. C. L., sec. 13; N. J. cf. C. A., sec. 1 (5); N. Y. G. C. L., secs. 34, 43; W. Va. Code, c. 53, secs. 49, 51; amended 1901 Acts, 38; Wis. cf. S., sec. 1749. — 14) State Natl. Bank v. Union Natl. Bank, (1897) 168 Ill. 256 and 519. Del. cf. G. C. L., sec. 32; Ill. G. C. L., sec. 20; La. R. S. 1870, sec. 741; Me. R. S., c. 47, sec. 19; Mass. B. C. L., sec. 25; Mich. C. A., sec. 20; Minn. cf. R. L., sec. 3071; N. J. C. A., sec. 44; N. Y. B. C. L., sec. 2; Pa. L. 1886, p. 1228; W. Va. Code, c. 54, sec. 23; amended 1901 Acts, 35. — 15) *United Growers' Co. v. Eisner*, (1897) 47 N. Y. Supp. 906. — 16) *Whitehead v. Rubber Co.*, (1893) 52 N. J. Eq. 78; and cf. Cal. Civ. Code, sec. 320; Ill. G. C. L., sec. 20; Mass. B. C. L., sec.

25; Mich. cf. C. A., sec. 10; N. Y. G. C. L., sec. 43. — 17) *Farwell v. Copper Works*, (1881) 8 Fed. 66. — 18) *Chase v. Tuttle*, (1888) 55 Conn. 455. — 19) Cf. *Hero v. Consumers' Lumber Mfg., etc., Co.*, (1909) 123 La. 359. — 20) *Bell v. Standard, etc., Co.*, (1905) 146 Cal. 699. — 21) *Barrell v. Lake View Land Co.*, (1898) 122 Cal. 129; *Illinois Commercial Men's Assn. v. Perrin*, (1908) 139 Ill. App. 543. — 22) *Sargent v. Webster*, (1847) 13 Metc. (Mass.) 497; *Ten Eyck v. Pontiac, etc., R. Co.*, (1889) 74 Mich. 226; and cf. V, C, 7, a, 1, note 13. — 23) *First Natl. Bank of Omaha v. East Omaha Box Co.*, (1902) 90 N. W. 223; *Craig Medicine Co. v. Merchants' Bank*, (1891) 59 Hun. (N. Y.) 56; *State ex rel. Schroeder v. Perkins*, (1901) 90 Mo. App. 603. — 24) *McNeil v. Boston Chamber of Commerce*, (1891) 154 Mass. 277; cf. *Leavitt v. Oxford & Geneva Silver Mining Co.*, (1883) 3 Utah 265. — 25) *Gashwiler v. Willis*, (1867) 33 Cal. 11. — 26) *Kansas City Hay Press Co. v. Devel*, (1896) 72 Fed. 717; *Pauly v. Pauly*, (1895) 107 Cal. 8; *Peirce v. Morse-Oliver Co.*, (1900) 94 Me. 406; *Columbia Bank v. Gospel Tabernacle*, (1891) 127 N. Y. 361. — 27) *Audenreid v. East Coast Milling Co.*, (1904) 68 N. J. Eq. 450; *Landers v. Frank St. M. E. Church*, (1889) 114 N. Y. 626; cf. *Sampson v. Bowdoinham*, (1853) 32 Me. 78.

management and supervision of the corporate affairs in detail to an executive committee, which has power to act between meetings of the general board<sup>1</sup>). In the absence of such express permission, however, the board must itself discharge the general duties of supervision<sup>2</sup>) and any special duties assigned to it by the constating instruments<sup>3</sup>), although it may of course appoint agents and officers to execute the details of the policy the directors initiate<sup>4</sup>).

**8. DUTIES AND LIABILITIES OF DIRECTORS.** — *a) To the Company.* — If the directors intentionally do what is in fact beyond their granted powers they are personally liable to the corporation for any losses thus caused<sup>5</sup>). But they may escape this liability by showing that they acted honestly under a reasonable misapprehension as to the existence of facts which had they existed would have made the act a lawful one<sup>6</sup>). Directors are liable for fraudulent acts intended to injure their company<sup>7</sup>). But they are not liable for an honest mistake in judgment, however serious<sup>8</sup>). They are bound, however, to exercise their best judgment, and a failure to do this will make the directors liable for losses caused by such negligence<sup>9</sup>). Some cases lay down as the test of proper care by the directors for the corporation's affairs: "the same degree of care and prudence that men prompted by self-interest generally exercise in their own affairs<sup>10</sup>)." The duty of care does not require attention to the details of the corporation's business<sup>11</sup>), but it does include knowledge of the constating instruments and by-laws<sup>12</sup>), control of the larger policies and lines of business of the company, care in the selection of the employees and executive officers of the company, and a reasonable attention to the checking up of their accounts and inspection of their work<sup>13</sup>). A director is not responsible for acts of the board in which he has not participated<sup>14</sup>), unless by unexcused non-attendance at meetings, or other neglect of duty, he has practically abetted wrong-doing by the board<sup>15</sup>). It is, however, his duty to inform himself of the acts of the board at meetings at which he was not present, and if these acts are breaches of the duty it owes the corporation he should protest<sup>16</sup>). The liability of directors for breach of the duty of care of the corporate affairs is to the corporation, and not, in the normal case, to the shareholders or creditors<sup>17</sup>).

The general inadequacy of the doctrines of civil liability to prevent inactivity on the part of directors if this inactivity cannot be coupled with bad faith has led to the enactment of penal statutes designed to secure diligence and care from the directors in the discharge of the duties of management by making each director responsible for the action of the whole board unless by proper remonstrance against a contemplated wrong course of action he clears his own skirts<sup>18</sup>).

*b) To Third Persons.* — Directors are liable to third persons for contracts made on behalf of their corporation to the same extent and on the same principles as other agents. They are personally responsible for their own frauds or other torts committed against third parties<sup>19</sup>), but are not responsible for torts of the corporation in which they have not themselves directly or indirectly participated<sup>20</sup>). At common law, officers, including directors, were not liable to creditors of the corporation for

<sup>1</sup>) Conn. P. A. 1903, c. 194, sec. 10; Del. G. C. L., sec. 9; Me. R. S., c. 47, sec. 19; Mass. B. C. L., sec. 19; W. Va. Code, c. 53, sec. 53; amended 1901 Acts, 35; P. I. cf. C. L., sec. 33. — <sup>2</sup>) Union Natl. Bank v. Hill, (1899) 148 Mo. 380. But cf. Sheridan Electric Light Co. v. Bank, (1891) 127 N. Y. 517; John A. Roebling's Sons Co. v. Barre, etc., Co., (1903) 76 Vt. 131. — <sup>3</sup>) Monmouth, etc., Ins. Co. v. Lowell, (1871) 59 Me. 504. — <sup>4</sup>) Cf. Mason v. Moore, (1906) 73 Ohio St. 275. — <sup>5</sup>) Hutchinson v. Sutton Mfg. Co., (1893) 57 Fed. 998; Gilbert v. Finch, (1903) 73 N. Y. 455. — <sup>6</sup>) Davenport v. Lines, (1905) 77 Conn. 473. — <sup>7</sup>) Miner v. Belle Isle Ice Co., (1892) 93 Mich. 97; Pennsylvania Sugar Refining Co. v. American Sugar Refining Co., (1908) 166 Fed. 254. — <sup>8</sup>) Spiering's Appeal, (1872) 71 Pa. 11; Citizens' Bldg. Assn. v. Corioli, (1881) 34 N. J. Eq. 383. — <sup>9</sup>) Gibbons v. Anderson, (1897) 80 Fed. 345. — <sup>10</sup>) Hun

v. Cary, (1880) 82 N. Y. 65. — <sup>11</sup>) Briggs v. Spaulding, (1891) 141 U. S. 132. — <sup>12</sup>) Campbell v. Watson, (1901) 62 N. J. Eq. 396. — <sup>13</sup>) Gibbons v. Anderson, (1897) 80 Fed. 345; Sun Printing, etc., Assn. v. Moore, (1902) 183 U. S. 642; Rankin v. Cooper, (1907) 149 Fed. 1010; cf. Ricker v. Hall, (1899) 69 N. H. 592. — <sup>14</sup>) Briggs v. Spaulding, supra; cf. Fisher v. Graves, (1897) 80 Fed. 590. — <sup>15</sup>) Warner v. Penoyer, (1898) 91 Fed. 587; Union Natl. Bank v. Hill, (1899) 148 Mo. 380; cf. Williams v. McKay, (1886) 46 N. J. Eq. 25. — <sup>16</sup>) Horn Silver Mining Co. v. Ryan, (1889) 42 Minn. 196. — <sup>17</sup>) Marlborough Assn. v. Peters, (1901) 179 Mass. 61; but cf. Lindemann v. Rusk, (1905) 125 Wis. 210. — <sup>18</sup>) Vide V. C. S. c. — <sup>19</sup>) Favorite v. Cottrill, (1895) 62 Mo. App. 119; Charles Lehman-Charley v. Bartlett, (1909) 120 N. Y. Supp. 501. — <sup>20</sup>) Savage v. Shaw, (1907) 81 N. E. 303 (Mass.); cf. McCrea v. McClellan, (1909) 115 N. Y. Supp. 720.

corporate debts, nor even for such mismanagement or neglect of the corporate business as led to its insolvency<sup>1</sup>), but only so long as they were not guilty of fraudulent diversion of corporate assets from the creditors<sup>2</sup>). But statutory liability of the directors to the creditors has usually been created for failures in making prescribed reports and records<sup>3</sup>), or for paying unearned dividends<sup>4</sup>), or for other delinquencies injurious to the creditor's interests<sup>5</sup>). These statutes are regarded by most states as penal, since they impose a liability upon misconduct in office<sup>6</sup>). Some states, however, regard the statutes as merely remedial<sup>7</sup>). In the former class the right of action of the creditors expires at the time set by the statute of limitations for penal actions<sup>8</sup>). Also, where the liability is regarded as penal it need not be enforced by the courts of another state<sup>9</sup>). But the Supreme Court of the United States has decided that where a judgment has been recovered against directors to enforce their personal liability under such a statute, there is a right of recovery on the judgment in a court of another state<sup>10</sup>). The theory of the Supreme Court is that while the statute imposes a penalty on the defaulting officer it is remedial as to creditors. All states agree that the creditor to obtain his remedy must come within a strict construction of the statute<sup>11</sup>). If the statute is repealed, unless it contains a saving clause to the contrary, all rights of action will be put an end to in the states which regard the statutes as penal in nature<sup>12</sup>). The dissolution of the corporation after the directors' default does not relieve the directors from liability<sup>13</sup>).

*c) Criminal Liability.* — Directors are of course individually liable criminally for participating in a violation of law in their conduct of the corporate business, and a statutory liability expressly criminal is generally imposed on them for embezzlement of the corporate funds, for the making or publication of false reports, and in some states for a failure to make or publish reports required by law<sup>14</sup>).

**9. DIRECTORS' CONTRACTS AND DEALINGS WITH THE CORPORATION.** — *a) In General.* — As fiduciaries, directors ought not to occupy a position in which their interests as individuals will conflict with those of their company<sup>15</sup>). This private interest of a director in a transaction with his corporation may arise from his acting as principal, himself, on the other side of the contract<sup>16</sup>), or as joint principal with others<sup>17</sup>), or as the agent of others<sup>18</sup>). He may be a shareholder<sup>19</sup>) or even a director<sup>20</sup>) of a second corporation, or seeking to contract with his own corporation. These relations do not, however, prevent directors from entering into contracts with their company<sup>21</sup>). To hold otherwise would frequently prevent corpora-

<sup>1</sup>) *Lyman v. Bonney*, (1875) 118 Mass. 222. — <sup>2</sup>) Liable to creditors for fraud: *Donovan v. Purcell*, (1905) 216 Ill. 629. — <sup>3</sup>) *Davis v. Mills*, (1904) 194 U. S. 451; *Nelson v. Bank of Fergus Co.*, (1907) 157 Fed. 161 (directors of a foreign corporation). — <sup>4</sup>) *Ellis v. French Canadian, etc., Assn.*, (1904) 189 Mass. 566; *Rorke v. Thomas*, (1874) 56 N. Y. 559; *Appleton v. American Matting Co.*, (1903) 65 N. J. Eq. 375. — <sup>5</sup>) *American Steel, etc., Co. v. Bearse*, (1907) 80 N. E. 623 Mass. — <sup>6</sup>) *Providence Steam Engine Co. v. Hubbard*, (1879) 101 U. S. 188; *Gadsden v. Woodward*, (1886) 103 N. Y. 242; *Nassau Bank v. Brown*, (1879) 30 N. J. Eq. 478. Accord: *California, Colorado, Missouri*. — <sup>7</sup>) *Davis v. Mills*, (1900) 99 Fed. 39 (Conn.). Accord: *Arkansas, Georgia, Indiana, Massachusetts, Vermont*. — <sup>8</sup>) *Knox v. Baldwin*, (1880) 80 N. Y. 610. — <sup>9</sup>) *Denickson v. Smith*, (1858) 27 N. J. L. 166. — <sup>10</sup>) *Huntington v. Attrill*, (1892) 146 U. S. 657. — <sup>11</sup>) *Chase v. Curtis*, (1885) 113 U. S. 452; *Hoboken Beet Co. v. Hand*, (1905) 104 N. Y. App. Div. 390; *Priest v. Essex, etc., Co.*, (1874) 115 Mass. 380. — <sup>12</sup>) *Union Iron Co. v. Pierce*, (1869) 4 Biss. 327; *Victory, etc., Co. v. Beecher*, (1884) 97 N. Y. 65. — <sup>13</sup>) *Ginsburg v. Von Seggern*, (1901) 59 N. Y. App. Div. 595. — <sup>14</sup>) *Statutory liabilities of directors*. Cal. Civ. Code, sec. 316; Const., Art. XII, sec. 2; Penal Code, secs. 504,

557—572; Conn. P. A. 1903, c. 194, secs. 5, 18, 39; Del. G. C. L., secs. 28, 29, 35, 37; Ill. G. C. L., secs. 16, 21; Me. R. S., c. 47, sec. 32; Mass. B. C. L., secs. 11, 34, 35; Mich. C. A., sec. 12, as amended by Act No. 137, P. A. 1907; C. A., secs. 22, 23, 25; Minn. R. L., secs. 2284, 2285, 3171; N. J. C. A., sec. 29; sec. 30 as amended P. L. 1904, p. 275; sec. 33 as amended P. L. 1898, p. 408; C. A., secs. 15, 52; N. Y. S. C. L., secs. 29, 35; G. C. L., secs. 90, 91; P. L., sec. 667; Pa. Act of 1874, sec. 39 (5, 6); L. 1878, p. 196, secs. 2—5; Tex. R. S., art. 670; W. Va. Code, c. 53, sec. 40; Wis. L. 1907, p. 414; S., secs. 1750, 1750a, 1757, 1759, 1765. Cf. *Ex parte McKinney*, (1909) 10 Cal. App. 357; *Commonwealth v. Dewhurst*, (1906) 190 Mass. 293. — <sup>15</sup>) Cf. *Singers-Bigger v. Yeung*, (1908) 166 Fed. 82. — <sup>16</sup>) *Twin Lick Oil Co. v. Marbury*, (1875) 91 U. S. 587; *Mfg. Co. v. Bradley*, (1881) 105 U. S. 175. — <sup>17</sup>) *Sims v. Petaluma Gas Light Co.*, (1901) 131 Cal. 656. — <sup>18</sup>) *Cumberland Coal Co. v. Sherman*, (1859) 30 Barb. (N. Y.) 553. — <sup>19</sup>) *Pierce v. Old Dominion, etc., Co.*, (1904) 67 N. J. Eq. 399. — <sup>20</sup>) *Jesup v. Ill. Central R. Co.*, (1890) 43 Fed. 483; cf. *Pearson v. Concord R. R. Corp.*, (1883) 62 N. H. 537. — <sup>21</sup>) *Beach v. McKinnon*, (1906) 148 Fed. 734; *Garretson v. Pacific Crude Oil Co.*, (1905) 146 Cal. 184. —

tions from getting needed assistance from the only sources willing to supply it. Hence bonâ fide loans by directors to the corporation<sup>1)</sup> and purchases from the corporation<sup>2)</sup> are most frequent and, though subject to closest scrutiny by the courts<sup>3)</sup>, not void<sup>4)</sup>. If the corporation does not disaffirm within a reasonable time they are perfectly valid<sup>5)</sup>. If, however, the entering into the contract by the corporation was brought about by a vote of the board of directors in which the individual vote of the interested director was a necessary component, such contract, no matter how fair or advantageous to the corporation, may be avoided at the company's election<sup>6)</sup>. If, however, the interested director refrained from taking part in the action by a disinterested quorum of the board<sup>7)</sup>, or if, although he did take part, there was still a sufficient number of votes of disinterested directors to authorize the contract<sup>8)</sup>, then in most American jurisdictions the corporation cannot avoid the contract if the director can show that it was made in good faith and without undue influence practised by him on the board<sup>9)</sup>. In any case the right to avoid the contract is personal to the corporation, and cannot pass by assignment to third parties<sup>10)</sup>.

*b) Confirmation of Contracts with Interested Directors.* — If the shareholders by a proper vote authorize the board to deal with one if its members, or if by express confirmation or by mere acquiescence with knowledge of the facts they ratify such a contract already made, the contract will be made valid<sup>11)</sup>, if the act of the shareholders is not a fraud on creditors of the corporation or a minority of the shareholders themselves<sup>12)</sup>. The interested director himself may vote whatever shares he owns to confirm his contract, and his vote will be counted to make up a majority<sup>13)</sup>.

**10. COMPENSATION OF DIRECTORS.** — The charter or by-laws of a corporation may allow directors a salary for their services in that capacity or fees for attendance at meetings, but in the absence of such allowance they are not entitled to payment for the discharge of the duties of their position<sup>14)</sup>, nor can they establish salaries or fees for themselves<sup>15)</sup>. For extraordinary services, not in the line of their work as directors, they may recover in a proper case quasi ex contractu<sup>16)</sup>; or if they have contracted with their fellow-directors for compensation in case of these unusual services the contract will be treated like other contracts of a director with his corporation<sup>17)</sup>.

**11. PROFITS ARISING FROM THE OFFICE.** — A director has no right to retain against his corporation profits which he has made by virtue of his office, wherever the making of them involves a temptation to act contrary to the interest of the corporation<sup>18)</sup>. If he has made a contract with the corporation it is, as has been shown<sup>19)</sup>, voidable at the option of the corporation. If, however, the corporation beforehand authorizes the contract, he is entitled to any profit he may make out of it. If it ratifies it subsequently it may affirm the contract but compel the director to account for his profit<sup>20)</sup>. The director cannot retain a gift or commission from third parties on account of transactions negotiated or entered upon be-

1) *Schnittger v. Old Home, etc., Co.*, (1904) 144 Cal. 603. — 2) *Tenison v. Patton*, (1902) 95 Tex. 284. — 3) *Cf. In re Castle Braid Co.*, (1906) 145 Fed. 224; *Snediker v. Ayers*, (1905) 146 Cal. 407; *Camden Land Co. v. Lewis*, (1905) 101 Me. 78. — 4) *Cf. Robotham v. Prudential Ins. Co.*, (1903) 64 N. J. Eq. 373. — 5) *Urner v. Sollenberger*, (1899) 89 Md. 316. 6) *Wardell v. Railroad Co.*, (1880) 103 U. S. 651; *Pacific Vinegar, etc., Works v. Smith*, (1904) 145 Cal. 352. — 7) *Schnittger v. Old Home, etc., Co.*, (1904) 144 Cal. 603; *Fort Payne Rolling Mill v. Hill*, (1899) 174 Mass. 224. *Contra. Munson v. Syracuse, etc., R. R. Co.*, (1886) 103 N. Y. 58; and *cf. Hodge v. U. S. Steel Corporation*, (1903) 64 N. J. Eq. 807. — 8) *Union Trust Co. v. Carter*, (1905) 139 Fed. 717; *Richards v. Attleborough Natl. Bank*, (1899) 148 Mass. 187. — 9) *Woodrooff v. Howes*, (1891) 88 Cal. 184; *Wilkinson v. Bauerle*, (1886) 41 N. J. Eq. 635; *cf. Hicks v. Steel*, (1901) 126 Mich. 408. — 10) *Stewart v. Lehigh Valley R. R. Co.*, (1875) 38 N. J. L. 505. — 11) *Sanford Fork & Tool Co. v. Howe*,

*Brown & Co.*, (1895) 157 U. S. 312; *Hodge v. U. S. Steel Corporation*, *supra*; and *cf. Given v. Gans*, (1905) 181 N. Y. 538. — 12) *Hinds v. Fishkill, etc., Gas Co.*, (1904) 88 N. Y. Supp. 954. — 13) *Hodge v. U. S. Steel Corporation*, *supra*. — 14) *Cf. Bassett v. Fairchild*, (1901) 132 Cal. 637; *Grafner v. Pittsburg, etc., Ry. Co.*, (1903) 207 Pa. St. 217. — 15) *Davis v. Thomas & Davis Co.*, (1902) 63 N. J. Eq. 572; *Camden Land Co. v. Lewis*, (1905) 101 Me. 78; *Marshall v. Industrial Federation of America*, (1903) 84 N. Y. Supp. 866. — 16) *Fitzgerald, etc., Construction Co. v. Fitzgerald*, (1890) 137 U. S. 98; *cf. Lillard v. Oil, Paint & Drug Co.*, (1904) 70 N. J. Eq. 197; *Dial v. Inland Logging Co.*, (1909) 52 Wash. 81. — 17) *Cf. Henry v. Michigan Sanitarium & Benevolent Assn.*, (1907) 147 Mich. 142; *Ritchie v. People's Telephone Co.*, (1909) 119 N. W. 990 (S. D.); *vide V. C. 9.* — 18) *Cf. Bird Coal & Iron Co. v. Humes*, (1893) 157 Pa. St. 278, 287. — 19) *Vide V. C. 9.* — 20) *Pepper v. Addicks*, (1907) 153 Fed. 383; *Parker v. Nickerson*, (1873) 112 Mass. 195.

tween his corporation and these third parties<sup>1</sup>). Any such present the corporation can claim from him as received to its use<sup>2</sup>). Only permission from the corporation, either by its formal act or by conscious acquiescence, will give him a right to retain the sum in question<sup>3</sup>).

A director who is charged with the duty of acting on behalf of the corporation in a transaction such as the making of a contract or the acquiring of property cannot make the contract or acquire the property for himself<sup>4</sup>). But the limits of the rule that a director must not engage in transactions likely to interest him adversely to the corporation are hard to draw from the cases. He may purchase the corporation's outstanding obligations before maturity, even at a discount, and enforce them at maturity against the corporation at par<sup>5</sup>); and in many states he may purchase the property of his corporation at a judicial sale<sup>6</sup>).

**D. Executive Officers.** — 1. **QUALIFICATION.** — The officers of a corporation are usually a president, a secretary, and a treasurer. The president is generally required by statute to be a director<sup>7</sup>). Where a corporation has one or more vice presidents, as is not uncommon, especially in large corporations, they are generally required by charter or by-laws to be directors. The other officers are often directors, but a statutory requirement to this effect is relatively infrequent.

2. **APPOINTMENT.** — The officers are usually selected by the board of directors, and this is quite generally prescribed by statute, though in several states the matter is left to the corporate regulations<sup>8</sup>).

3. **POWERS.** — The powers of the corporate officers are usually defined by the charter or by-laws of the individual corporation, but in the absence of any evidence as to such definition American courts incline to draw from the title of the office *prima facie* presumptions as to the authority of the officer. Unfortunately, the presumptions made differ materially in different courts, so that no general rule can be laid down. Thus in some states the only power legally inferable from the office of president is that of presiding at directors' meetings<sup>9</sup>). In many others he has *prima facie* the powers of a general manager of the corporate business<sup>10</sup>). Similar conflicts of authority occur in the case of the powers of other officers, such as the treasurer<sup>11</sup>), and the general manager, the name sometimes given in articles or by-laws to the president of a corporation or to a distinct officer with the duty of general direction of the details of the corporate business<sup>12</sup>). In fine, no general rules can be laid down as to the powers of executive officers. They depend in the main on questions of fact<sup>13</sup>), the most important of which are the charter and the by-laws of the particular corporation.

Those who deal with the officers of the corporation can hold the corporation itself only on the ground of the officers' agency. The corporation will not be liable

<sup>1</sup>) Goodell v. Verdugo Canon Water Co., (1903) 138 Cal. 308; *Mt. Vernon Bank v. Porter*, (1889) 148 Mo. 176. — <sup>2</sup>) Chandler v. Bacon, (1887) 30 Fed. 538; *Farmers', etc., Bank v. Downey*, (1879) 53 Cal. 466. — <sup>3</sup>) Cf. Goodell v. Verdugo Canon Water Co., *supra*, at p. 314. — <sup>4</sup>) Higgins v. Lansingh, (1895) 154 Ill. 301; *McClure v. Law*, (1899) 161 N. Y. 78. — <sup>5</sup>) *Camden Safe Deposit, etc., Co. v. Citizens' Ice, etc., Co.*, (1905) 69 N. J. Eq. 718; *Seymour v. Spring Forest Assn.*, (1895) 144 N. Y. 333. But cf. *Young v. Columbia Land, etc., Co.*, (Oreg., 1909) 101 Pac. 212. — <sup>6</sup>) *Twin Lick Oil Co. v. Marbury*, (1875) 91 U. S. 587; *Snediker v. Ayres*, (1905) 146 Cal. 407; *Marr v. Marr*, (1907) 66 Atl. 182. — <sup>7</sup>) Cal. Civ. Code, sec. 308; Conn. P. A. 1903, c. 194, p. 70; Del. G. C. L., sec. 10; Me. R. S., c. 47, sec. 19; Mass. B. C. L., sec. 18; Mich. C. A., sec. 6; Minn. R. L., sec. 2859; N. J. C. A., sec. 13; N. Y. S. C. L., sec. 30; Pa. L. 1891, p. 61; Tex. R. S., art. 656; W. Va. Code, c. 53, sec. 50; Wis. S., sec. 1776; P. I. C. L., sec. 33. — <sup>8</sup>) Cal. Civ. Code, sec. 308; Conn. P. A. 1903, c. 194, sec. 70; Del. cf. G. C. L., sec. 10; Ill. cf. G. C. L., sec. 6; Mass. cf. B. C. L., sec. 18; Mich.

C. A., sec. 6; N. J. cf. C. A., secs. 13, 14; N. Y. S. C. L., sec. 30; P. I. C. L., sec. 33. — <sup>9</sup>) *Wait v. Nashua Armory Assn.*, (1891) 66 N. H. 581; cf. *Ansley Land Co. v. H. Weston Lumber Co.*, (1907) 152 Fed. 841; *Pacific Bank v. Stone*, (1898) 121 Cal. 202; *Raub v. Blairstown Creamery Assn.*, (1893) 56 N. J. L. 262. — <sup>10</sup>) *White v. Elgin Creamery Co.*, (1899) 108 Ia. 522; *Dexter Savings Bank v. Friend*, (1898) 90 Fed. 703; *Geo. E. Lloyd & Co. v. Matthews*, (1906) 223 Ill. 477; *Slatery v. North End Savings Bank*, (1900) 175 Mass. 380; *Beebe v. Geo. H. Beebe Co.*, (1900) 64 N. J. L. 497. — <sup>11</sup>) Cf. *Black v. First Natl. Bank of Westminster*, (1903) 96 Md. 399, and *Merchants' Natl. Bank v. Citizens' Gas Light Co.*, (1893) 159 Mass. 505. — <sup>12</sup>) Cf. *Sun Printing, etc., Assn. v. Moore*, (1902) 183 U. S. 642; *Raleigh & G. R. Co. v. Pullman Co.*, (1905) 122 Ga. 700, and *Centerville, etc., Ditch Co. v. Sanger etc., Co.*, (1903) 140 Cal. 385; *Wagg-Anderson, etc., Co. v. Leshner, etc., Co.*, (1898) 78 Ill. App. 678. — <sup>13</sup>) Cf. *First Natl. Bank of Binghampton v. Commercial Travelers' Assn.*, (1905) 95 N. Y. Supp. 454; *Clarke v. Lexington Stove Works*, (1903) 72 S. W. 286.



if the agent has exceeded his authority<sup>1</sup>), unless on the ground of estoppel. Where a corporation has led persons dealing with an officer reasonably to believe that he possessed certain powers, the corporation will be estopped from disputing its liability to the person who has dealt with the officer in reliance on the powers, even though in fact the officer did not possess them<sup>2</sup>).

**4. DUTIES OF OFFICERS.** — The duties of executive officers are defined in the main by the charter and by-laws of the corporation, but resolutions of the directors or the shareholders supplement these in particular cases. Statutes usually lay upon the president and secretary the duty of making certain reports to the state as to the condition of the corporation<sup>3</sup>). Failure to do this generally involves penalties imposed upon the delinquent officers as well as on the corporation<sup>4</sup>).

**5. COMPENSATION.** — The officers who are not also directors are agents of the corporation, and are entitled to compensation for the discharge of their official duties. It is usually provided for by contract, but even if it is not so fixed they are entitled to reasonable compensation<sup>5</sup>), unless it appears that no compensation was mutually contemplated in the particular case<sup>6</sup>). The officers who are directors must give their services as part of their duties as directors, and can recover compensation only under the principles entitling directors to such compensation<sup>7</sup>).

**VI. SHARES AND SHAREHOLDERS. — A. Membership in General.** — Membership in business corporations is the result of a contract between the corporation and the individual member. In the case of non-stock corporations the terms of the contract vary widely among corporations. They are usually prescribed for the original incorporators by charter or statute, and for subsequent members by rules or by-laws. Membership in stock corporations arises from the ownership of shares of stock<sup>8</sup>).

**B. Nature of Shares.** — Shares of stock in America are personal property, in the nature of choses in action<sup>9</sup>). They are usually treated as within sections of the state Statutes of Frauds similar to the seventeenth section of the English statute<sup>10</sup>). Generally shares have been made subject by statute to execution and attachment. Though share certificates are usually issued to shareholders, they are merely evidence of an existing right of the shareholder, and are not necessary to make him a shareholder<sup>11</sup>).

**C. Acquisition of Shares.** — Shares may be acquired by subscription or transfer. The subscription may be made prior to or after the formation of a corporation<sup>12</sup>).

**1. SUBSCRIPTION FOR SHARES.** — *a) In General.* — Where the statutes require that each signer of the incorporation paper must subscribe shares, he is

<sup>1</sup>) *Slattery v. North End Savings Bank*, (1900) 175 Mass. 380; *Peirce v. Morse-Oliver Bldg. Co.*, (1900) 94 Me. 406. — <sup>2</sup>) *Fitzgerald & Mallory Construction Co. v. Fitzgerald*, (1890) 137 U. S. 98; *Barrell v. Lake View Land Co.*, (1898) 122 Cal. 129; *New York & N. H. R. Co. v. Schuyler*, (1865) 34 N. Y. 30. — <sup>3</sup>) Conn. P. A. 1903, c. 194, sec. 37, as amended by P. A. 1909, c. 160; Del. Tax. L., sec. 2; Ill. G. C. L., sec. 17; Me. R. S., c. 47, secs. 26—31; Mass. B. C. L., secs. 46—49; Mich. C. A., sec. 12, as amended by Act 137, P. A. 1907; N. J. C. A., sec. 43, as amended P. L. 1900, p. 313; N. Y. S. C. L., sec. 34; Pa. Act of 1874, sec. 39 (8); W. Va. Code, c. 53, sec. 60; Wis. S., sec. 1750. — <sup>4</sup>) Cal. Civ. Code, sec. 316; Penal Code, secs. 504, 557, 558, 563—571; Conn. P. A. 1903, c. 194, sec. 39; Del. G. C. L., secs. 24, 37; Ill. G. C. L., secs. 16, 21, and cf. *Anti Trust Law*, Act of Apr. 23, 1891; Me. R. S., c. 47, sec. 30; Mass. B. C. L., secs. 34—35; *Laws Mass.* 1907, c. 282, secs. 1—3; Mich. C. A., sec. 12; Minn. R. L., sec. 2885; N. J. C. A., sec. 52; N. Y. S. C. L., sec. 35; Penal Law, secs. 661—667; Pa. Act of 1874, sec. 39 (6); Wis. S., sec. 1750a; L. 1905, c. 347. For statutory requirements as to keeping of corporate records see VI. D. 3. — <sup>5</sup>) *Bee v. S. F. & H. B. R. Co.*, (1873) 46 Cal.

248; cf. *Dallas v. Columbia Iron, etc., Co.*, (1893) 158 Pa. St. 444. — <sup>6</sup>) *Sidway v. Missouri Land, etc., Co.*, (1905) 187 Mo. 649; *Mather v. Eureka Mower Co.*, (1890) 118 N. Y. 629. — <sup>7</sup>) *Vide supra*, V. C. 10. — <sup>8</sup>) *Business Men's Assn. v. Williams*, (1909) 137 Mo. App. 575. — <sup>9</sup>) Cf. Cal. Civ. Code, sec. 298; Ill. G. C. L., sec. 3; N. Y. cf. G. C. L., sec. 2; W. Va. cf. Code, c. 53, sec. 19. In America no distinction, such as prevails in England, is drawn between "shares" and "stock," or between "shareholders" and "stockholders." The words are used interchangeably. — <sup>10</sup>) *Wuller v. Chase Grocery Co.*, (1909) 241 Ill. 398; *Champollion v. Corbin*, (1901) 71 N. H. 78. Cal. Civ. Code, sec. 324; Conn. P. A. 1903, sec. 21; Del. G. C. L., sec. 16; Ill. G. C. L., sec. 7; Me. cf. R. S., c. 47, secs. 34, 35; Mass. cf. B. C. L., sec. 28; Mich. C. A., sec. 16; N. J. C. A., sec. 20; Pa. L. 1905, p. 57; W. Va. Code, c. 53, sec. 20; Wis. S., sec. 1751. — <sup>11</sup>) *Greenwood v. Law*, (1893) 55 N. J. L. 168; *Hinchman v. Lincoln*, (1888) 124 U. S. 38; *Webb v. R. R. Co.*, (1893) 77 Md. 92. — <sup>12</sup>) *Hughes Mfg., etc., Co. v. Wilcox*, (1910) 108 Pac. 871 (Cal. App.); *New York, etc., Telephone Co. v. Great Eastern Telephone Co.*, (1909) 71 Atl. 1119, affirming 69 Atl. 528 (N. J.); *St. John v. Eberlein*, (1898) 57 N. Y. Supp. 998.

entitled to those he subscribes for in the subscription paper; and on the other hand he is bound to take them if the company comes into being<sup>1</sup>).

*b) Contract of Subscription.* — If the subscriber has signed some other paper than the articles, e. g. a subscription list circulated by promoters and not incorporated in the articles themselves, then he is merely making an offer to the corporation. This offer, so far as the corporation is concerned, is revocable at any time before the corporation comes into existence<sup>2</sup>). In order to prevent withdrawal by a subscriber without the consent of his co-subscribers various devices have been adopted. The subscription may be framed so as to constitute a promoter an agent with an irrevocable power of attorney to take shares in the company when it shall be incorporated; or the subscribers may bind themselves to pay their subscriptions to a designated person, as trustee to receive the money and turn it over to the corporation for shares when the corporation comes into being<sup>3</sup>). Upon organization the company can convert the offers of subscribers for shares into contracts by any act indicative of acceptance. The issuance of a certificate is not necessary<sup>4</sup>), nor is a registration on the books of the company<sup>5</sup>) unless required by statute<sup>6</sup>). The corporation is, of course, not bound to issue or allot any shares except those subscribed by the corporators in the incorporation paper<sup>7</sup>). But shares issued with an option of redemption have been allowed and the condition upheld<sup>8</sup>).

*1. Subscriptions on Special Terms.* — Subscriptions stipulating for special terms — e. g. as to time or terms of payment — are upheld if they do not exceed the limits of the charter powers of the corporation, and so far as they do not infringe upon the rights of creditors or other shareholders<sup>9</sup>).

*2. Implied Conditions.* — At common law it is an implied condition of contracts of subscription that the whole amount of the authorized capital of a corporation shall be subscribed for before any subscriber shall be liable<sup>10</sup>). The implication does not exist, however, if a statute allows the corporation to begin business before the entire amount is subscribed, or otherwise indicates an intention contravening the usual condition<sup>11</sup>). So also the articles of incorporation may rebut the implication<sup>12</sup>), and the subscriber may expressly or indirectly waive it<sup>13</sup>).

*3. Who may Subscribe.* — At common law any person who is capable of contracting may subscribe for stock, and no special form of subscription is necessary. Both these rules may be modified by stipulation in the articles of incorporation.

*4. Subscriptions Induced by Fraud.* — Subscriptions induced by fraud are voidable at the option of the subscriber if he acts with proper diligence<sup>14</sup>); and the revocation may be effectual even if the company has become insolvent<sup>15</sup>).

<sup>1</sup>) Windsor Electric Light Co. v. Tandy, (1893) 66 Vt. 248; McNaught v. Fisher, (1899) 96 Fed. 168. — <sup>2</sup>) Planters', etc., Packet Co. v. Webb, (1908) 46 So. 977 (Ala.); Bryant's, etc., Mill Co. v. Felt, (1895) 87 Me. 294; Hudson Real Estate Co. v. Tower, (1892) 156 Mass. 82; Sedalia, Warsaw, etc., Ry. Co. v. Wilkerson, (1884) 83 Mo. 235; but cf. Minneapolis Threshing Machine Co. v. Davis, (1899) 40 Minn. 110; Chicago Building, etc., Co. v. Lyon, (1901) 64 Pac. 6 (Okla.). — <sup>3</sup>) West v. Crawford, (1889) 80 Cal. 19; cf. San Joaquin, etc., Co. v. West, (1892) 94 Cal. 399; and cf. Chicago Building, etc., Co. v. Peterson, (1909) 118 S. W. 348 (Ky.). — <sup>4</sup>) Flour City Natl. Bank v. Shire, (1904) 89 N. Y. App. Div. 401. — <sup>5</sup>) Manchester St. Ry. Co. v. Williams, (1902) 71 N. H. 312. — <sup>6</sup>) *Certificate*: Cal. Civ. Code, sec. 323, amended March 18, 1907; Conn. P. A. 1903, c. 194, secs. 12, 15; Del. G. C. L., sec. 15; Me. R. S., c. 47, sec. 50; Mass. B. C. L., sec. 26; Minn. R. L., sec. 2879; N. J. C. A., sec. 19; N. Y. S. C. L., sec. 50; Pa. L. 1895, p. 258; W. Va. Code, c. 53; sec. 35; amended 1901 Acts, 35; P. I. C. L., sec. 35. — *Registration*: Cal. cf. Civ. Code, sec. 324; L. 1907, c. 470; Conn. cf. P. A. 1903, c. 194, secs. 20, 21; Del. G. C. L., sec. 16; Ill.

cf. G. C. L., secs. 7, 8; Me. R. S., c. 47, sec. 34; Mass. B. C. L., sec. 28; L. 1909, c. 490, Part IV, sec. 15; Mich. C. A., sec. 16; Minn. R. L., secs. 2863, 2864; N. J. C. A., sec. 20; N. Y. S. C. L., sec. 32; cf. sec. 50; Pa. L. 1889, p. 181; Tex. R. S., Art. 666; W. Va. Code, c. 53, sec. 21; amended 1901 Acts, 35, secs. 22, 36, 37; Wis. S., sec. 1751; P. I. C. L., sec. 35. — <sup>7</sup>) Vide supra, VI, C, 1, a, note 1. — <sup>8</sup>) Lindsay v. Arlington Co-operative Assn., (1904) 186 Mass. 371. — <sup>9</sup>) See Morawetz on Corporations, secs. 82, 84, and infra, VI, C, 1, c. 3. — <sup>10</sup>) Penobscot R. Co. v. White, (1856) 41 Me. 512, and cf. Audenreid v. East Coast, etc., Co., (1904) 68 N. J. Eq. 450, and Morgan v. Landstreet (1909) 72 Atl. 399. — <sup>11</sup>) Vide supra, II, H. — <sup>12</sup>) Anglo-American Land Co. v. Dyer, (1902) 181 Mass. 593. — <sup>13</sup>) Auburn Opera House, etc., Assn. v. Hill, (1893) 32 Pac. 587 (Cal.); Myer v. Sturges, (1908) 108 N. Y. Supp. 528, affirmed (1909) 90 N. E. 1162. — <sup>14</sup>) Krish v. Interstate Fisheries Co., (1905) 39 Wash. 381, and Barrows v. Natchang Silk Co., (1900) 72 Conn. 658; cf. Brown v. Allebach, (1908) 166 Fed. 488. — <sup>15</sup>) Newton Natl. Bank v. Newbegin, (1896) 74 Fed. 135; Cravens v. Eagle, etc., Mills Co., (1889) 120 Ind. 6.

5. *Conditional Subscriptions.* — Subscriptions may be made to take effect on the happening of a certain event, such as the total subscription of a certain amount before a certain date. These are really offers which the company may accept by fulfilling the condition<sup>1</sup>). The subscriber should be allowed to withdraw at any time before acceptance by the company<sup>2</sup>). Subscriptions may also be made subject to cancellation on the happening of a certain contingency. These are generally held good as absolute subscriptions, the condition being regarded as repugnant and void<sup>3</sup>), especially if it is to be kept secret<sup>4</sup>).

6. *Over-subscription.* — If an issue of stock is over-subscribed the corporation must make an apportionment on equitable principles<sup>5</sup>). Statutes sometimes provide a method<sup>6</sup>).

7. *Operation of the Contract of Subscription.* — Unless the rule is varied by statute or by the special terms of the contract, a subscriber by his subscription undertakes upon its acceptance by the company to pay in cash the par value of his shares at the call of the company. For breach of this undertaking the corporation has an action in assumpsit<sup>7</sup>). Statutes frequently give an additional remedy by forfeiture of the shares not paid for<sup>8</sup>).

c) *Payment for Shares.* — 1. *Deposits.* — Some statutes require a subscriber to pay a deposit in cash at the time of his subscription<sup>9</sup>). A failure to comply with this provision entitles the company to refuse his shares<sup>10</sup>).

2. *Calls.* — If the statute or the contract of subscription, or the charter of the corporation, fix a date for the payment of subscriptions, or dates for payments in instalments, no call from the company is necessary. The amount to be paid becomes a debt of the shareholder to the corporation at the date set<sup>11</sup>). But where no time is set, a call is required to fix liability<sup>12</sup>). Notice of a call is usually required<sup>3</sup>). Its form if prescribed must be carefully observed<sup>14</sup>).

The time and amount of the calls are within the discretion of the company<sup>15</sup>). But they are sometimes regulated by statute<sup>16</sup>). Unless the corporation is given the right by statute to commence business before all its capital stock is subscribed<sup>17</sup>), no calls can be levied until the corporation capital has been subscribed, except for preliminary expenses<sup>18</sup>). In the absence of statutory regulations the directors of the company should make the call<sup>19</sup>). Calls must operate uniformly upon the shareholders<sup>20</sup>). They should be paid in cash. Interest begins to run from the time

<sup>1</sup>) Webb v. Baltimore, etc., R. R. Co., (1893) 77 Md. 92. — <sup>2</sup>) Baltimore R. R. v. Pumphrey, (1891) 74 Md. 86. But cf. contra holding where subscriber cannot withdraw: Cravens v. Eagle Cotton Mills Co., (1889) 120 Ind. 6. — <sup>3</sup>) Yonkers Gazette Co. v. Jones, (1898) 51 N. Y. Supp. 973. Morrow v. Iron & Steel Co., (1888) 87 Tenn. 262. — <sup>4</sup>) Olmstead v. Vance, etc., Co., (1902) 196 Ill. 236. — <sup>5</sup>) Bristol, etc., Co. v. Tilton, (1900) 70 N. H. 239; cf. Burrows v. Smith, (1853) 10 N. Y. 550. — <sup>6</sup>) W. Va. Code, c. 53, sec. 27. — <sup>7</sup>) Windsor Electric Light Co. v. Tandy, (1893) 66 Vt. 248. But Massachusetts and Maine require an express promise to pay for the shares in addition to the subscription. Anglo-American Land & Mortgage Co. v. Dyer, (1902) 181 Mass. 593; Jay Bridge Co. v. Woodman, (1850) 31 Me. 573. — <sup>8</sup>) Vide infra, VI, C, 1, e. — <sup>9</sup>) N. Y. S. C. L., sec. 53; W. Va. Code, c. 53, secs. 25, 26. — <sup>10</sup>) New York, etc., R. Co. v. Van Horn, (1874) 57 N. Y. 473. — <sup>11</sup>) Phoenix Warehousing Co. v. Badger, (1876) 67 N. Y. 294. — <sup>12</sup>) Holt v. Holt Electric, etc., Co., (1897) 79 Fed. 597. — <sup>13</sup>) Cal. Civ. Code, sec. 334, and cf. sec. 331; Conn. P. A. 1903, c. 194, sec. 13; Del. G. C. L., sec. 21; Ill. G. C. L., secs. 7, 15; Me. cf. R. S., c. 47, sec. 37; Mass. B. C. L., secs. 15, 16; Mich. cf. C. A., sec. 11; N. J. C. A. sec. 22; N. Y. cf. S. C. L., sec. 54; Pa. cf. L. 1889, p. 181; Tex. cf. R. S., Arts.

667, 668; W. Va. cf. Code, c. 53, sec. 25; Wis. S., sec. 1754; P. I. C. L., sec. 38. Cf. United Fruit Growers' Co. v. Eisner, (1897) 47 N. Y. Supp. 906, and Crook v. International Trust Co., etc., (1909) 32 App. D. C. 490. — <sup>14</sup>) People's Mutual Ins. Co. v. Westcott, (1860) 14 Gray (Mass.) 440. — <sup>15</sup>) Anglo-American Land, etc., Co. v. Dyer, (1902) 181 Mass. 593; cf. Bank of China v. Morse, (1901) 168 N. Y. 458; Cook v. Carpenter, (1905) 212 Pa. St. 165. — <sup>16</sup>) Cal. Civ. Code, secs. 331—349; Conn. P. A. 1903, c. 194, sec. 13; Del. G. C. L., secs. 21, 22; Ill. G. C. L., sec. 7; Me. cf. R. S., c. 47, secs. 37, 38; Mass. B. C. L., sec. 11; Mich. C. A., sec. 11; N. J. C. A., secs. 22—24; N. Y. B. C. L., sec. 5; S. C. L., secs. 53, 54, and cf. 60; Pa. Act of 1874, sec. 3; L. 1883, p. 122, sec. 5; L. 1889, p. 181; Tex. G. L., Acts of 1907, p. 309; R. S. arts. 667, 668; W. Va. Code, c. 53, sec. 25; Wis. S., sec. 1773; L. 1905, p. 940; S., sec. 1754; P. I. C. L., sec. 9, Act No. 1834; C. L., secs. 37—50. — <sup>17</sup>) Vide supra, II, II. — <sup>18</sup>) Anvil Mining Co. v. Sherman, (1889) 74 Wis. 226; Salem Mill Dam Co. v. Ropes, (1827) 6 Pick. 23. — <sup>19</sup>) Fitzgerald's Estate v. Union Savings Bank, (1902) 65 Neb. 97; Budd v. Multnomah St. Ry. Co., (1887) 15 Ore. 413; and see references in note 16, supra. — <sup>20</sup>) Pike v. R. R. Co., (1878) 68 Me. 415.

fixed for payment<sup>1</sup>). Liability on calls depends on the ownership of shares<sup>2</sup>), and ownership at the time of the call<sup>3</sup>).

3. *Payment on Special Terms.* — a) *In General.* — While normally shares must be paid for up to their par value in cash on demand by the company, subscriptions on special terms are allowable, subject to the limitations set out in VI, C, I, b, I, and others if a statute imposes them<sup>4</sup>). As between the consenting parties, shares may even be issued at a discount<sup>5</sup>). Such an issue will prevent the company from making calls beyond the agreed value of the shares<sup>6</sup>), and will similarly bar suits by creditors who knew of the issue<sup>7</sup>), or who became creditors prior to the issue of the shares in question<sup>8</sup>). As to subsequent creditors who did not know that the shares were not fully paid the weight of American authority is that the shareholder is liable to pay up to par if necessary to satisfy their claims against the company<sup>9</sup>). Issue at a discount is, however, frequently prohibited by statute<sup>10</sup>). Such prohibition does not apply to the re-issue of shares which have reverted to the company<sup>11</sup>), and in some jurisdictions the shares issued by a going concern to rehabilitate a capital impaired by losses<sup>12</sup>).

b) *Payment other than Cash.* — Shares may be paid for in property or services. In many cases such payment is especially authorized by statute<sup>13</sup>). The value placed on such property or services by the company is conclusive<sup>14</sup>) in the absence of fraud or of collusion with intent to evade a prohibition of issues at a discount. In some jurisdictions the rule is that in payments other than money the commodity must be turned in at its true value at the time of payment irrespective of the belief of the corporation<sup>15</sup>).

Statutory regulation to prevent the over-valuation of property turned in in payment of shares exists in all jurisdictions. Some statutes require payment in cash; some forbid fictitious increase of stock; and some require a recording of contracts by which shares are paid for in anything else than cash<sup>16</sup>).

d) *Who are Liable to Pay Calls, Assessments, etc.* — The persons liable as shareholders are those registered on the books of the company as such<sup>17</sup>). But if the wrong person is registered through the fault of the company he will not be liable<sup>18</sup>). In the absence of statutory provision<sup>19</sup>) to the contrary a bonâ fide transfer entered on the books of the company renders the transferee liable<sup>20</sup>) and releases the trans-

1) Gould v. Town of Oneonta, (1877) 17 N. Y. 298; McCoy v. World's, etc., Exposition, (1900) 186 Ill. 356. — 2) Hawley v. Upton, (1880) 102 U. S. 314; Bristol Creamery Co. v. Tilton, (1900) 70 N. H. 239. — 3) Campbell v. American Alkali Co., (1903) 125 Fed. 217. — 4) California, etc., Co. v. Callender, (1892) 94 Cal. 120. — 5) Green v. Abietine Med. Co., (1892) 96 Cal. 322; Rickerson Roller Mill Co. v. Farrell, etc., Co., (1896) 75 Fed. 554. — 6) Hill v. Atoka Coal & Mining Co., (1894) 124 Mo. 153. — Goodnow v. American Writing Paper Co., (1907) 66 Atl. 607. — 7) Cunningham v. Holly, etc., Co., (1903) 121 Fed. 720. — 8) Cf. Easton Natl. Bank v. American Brick & Tile Co., (1906) 70 N. J. Eq. 732. — 9) Handley v. Stutz, (1891) 139 U. S. 417; In re L. Malleman Hardware Co., (1909) 172 Fed. 611; and cf. XI, d, 3, infra. — 10) Cf. statute references in VI, C, 3, b, note 1, infra. — 11) Mosher v. Sinnott, (1905) 79 Pac. 742 (Colo.). — 12) Handley v. Stutz, supra; Fogg v. Blair, (1891) 139 U. S. 118; Stein v. Howard, (1884) 65 Cal. 616; McDowell v. Lindsay, (1906) 213 Pa. St. 591. But cf. Donald v. American Smelting Co., (1901) 62 N. J. Eq. 729; Kraft v. Griffon Co., (1903) 81 N. Y. Supp. 438. — 13) Cal. Const., Art. XII, sec. 11; Conn. P. A. 1903, c. 194, sec. 12; Del. Const., Art. IX, sec. 3; G. C. L., sec. 14, as amended by 23 Del. Laws, c. 155; Ill. cf. Farwell v. Great Western Telegraph Co., (1896)

161 Ill. 522; La. Const. 1898, Art. 266; Me. R. S., c. 47, sec. 50; Mass. cf. B. C. L., sec. 14; Mich. C. A., sec. 14; Minn.: Hastings, etc., Co. v. Iron Range, etc., Co., (1896) 65 Minn. 28; N. J. C. A., secs. 48, 49, 50; N. Y. S. C. L., sec. 55; Pa. Const., Art. XVI, sec. 7; Act of 1874, sec. 17; L. 1876, p. 32; Tex. G. L., Acts of 1907, pp. 309, 312; W. Va. cf. Richardson v. Graham, (1898) 45 W. Va. 134; Wis. S., sec. 753; L. 1907, p. 410; P. I. C. L., sec. 9, as amended 1908, Act No. 1834; C. L., sec. 16. — 14) Coit v. Gold Amalgamating Co., (1886) 119 U. S. 343; Finletter v. Acetylene Light, etc., Co., (1906) 215 Pa. 86. And cf. Conn. P. A. 1903, c. 194, sec. 12; Del. G. C. L., sec. 14; Me. R. S., c. 47, sec. 50; Mass. cf. B. C. L., sec. 14; Mich. C. A., secs. 2 (6), 14; N. J. C. A., sec. 49; N. Y. S. C. L., sec. 55. — 15) Van Cleve v. Berkey, (1898) 143 Mo. 109; cf. See v. Heppenheimer, (1905) 69 N. J. Eq. 36. — 16) See statute references in note 13, supra. — 17) Brown v. Morton, (1904) 71 N. J. L. 26; Hurlburt v. Arthur, (1903) 140 Cal. 103. — 18) Earle v. Carson, (1903) 188 U. S. 42; cf. Burgess v. Seligman, (1882) 107 U. S. 20. — 19) Cf. Ill. G. C. L., sec. 8; Me. cf. R. S., c. 47, sec. 35; Mass. cf. B. C. L., sec. 28; Minn. R. L., secs. 2863, 2864; N. Y. cf. S. C. L., sec. 32; W. Va. Code, c. 53, secs. 22, 37; Wis. S., sec. 1751, 1756; P. I. cf. C. L., sec. 35. — 20) Sigua Iron Co. v. Brown, (1902) 171 N. Y. 488.

feror<sup>1</sup>). The transfer must, however, be registered to relieve the transferor<sup>2</sup>). Moreover the transfer is not *bonâ fide*, and the transferor will not be relieved, if it is made with the purpose of escaping liability, and to an insolvent transferee<sup>3</sup>); nor will the transferor escape if the transfer is made to a *bonâ fide* purchaser without notice that the shares are not paid up, in such a way that the corporation is unable to collect from him<sup>4</sup>).

e) *Forfeiture of Shares*. — Corporations are usually given by statute the right to forfeit shares on which calls have not been paid<sup>5</sup>). A corporation cannot confer this power on itself by by-law<sup>6</sup>). The provisions of the statute must be strictly followed to make the forfeiture valid<sup>7</sup>). If the forfeiture is irregular or wrongful the owner of the shares must compel his restoration to the register<sup>8</sup>), or recover damages for conversion<sup>9</sup>). The statutes are generally interpreted as giving the corporation an option to forfeit the shares, rather than as making them forfeit *ipso facto* on the happening of some specified contingency<sup>10</sup>). Some evidence of an intent to exact the forfeiture must therefore be given. Usually it takes the form of a notice to the owner of the shares<sup>11</sup>). The forfeiture becomes absolute upon the expiry of the time set in the notice. It may be prevented by payment of the call with interest and expenses at any time before that<sup>12</sup>).

The remedy of the corporation by forfeiture is cumulative to the right to sue in *assumpsit* unless expressly made otherwise<sup>13</sup>).

A forfeiture puts an end to the membership of the shareholder in the company, and wipes out all liability on the forfeited shares<sup>14</sup>), unless, as some statutes provide, the delinquent owner will still be liable for the unpaid calls due at the time of the forfeiture<sup>15</sup>).

f) *Lien of Corporation on Shares*. — Statutes in some states give a corporation a lien on the shares of its shareholders for some or all of their indebtedness to it<sup>16</sup>). Other statutes give corporations the right to create such liens by by-laws<sup>17</sup>). What debts are covered by such liens depends of course on the language of the statute or by-law, and the language is strictly construed<sup>18</sup>). Under liens created by statutory authority *bonâ fide* purchasers from shareholders take certificates subject to the lien, even though they have no actual knowledge of it but only constructive notice through the statute<sup>19</sup>). Most jurisdictions hold that the corporation can refuse to register the transfer until the debt is paid<sup>20</sup>). The corporation may, however, waive the lien<sup>21</sup>), and registration without a reservation will constitute such waiver<sup>22</sup>).

Corporations even without statutory authority sometimes pass by-laws giving the corporation a lien on shares for debts due the corporation, or put such a pro-

<sup>1</sup>) *Rochester, etc., Land Co. v. Raymond*, (1899) 158 N. Y. 576. — <sup>2</sup>) *Kenyon v. Fowler*, (1907) 155 Fed. 107; *Cook v. Carpenter*, (1905) 212 Pa. 177. — <sup>3</sup>) *McDonald v. Dewey*, (1906) 202 U. S. 510; *People's Home Savings Bank v. Rickard*, (1903) 139 Cal. 285. — <sup>4</sup>) *McBryan v. Universal Elevator Co.*, (1902) 130 Mich. 111. — <sup>5</sup>) Cal. Civ. Code, secs. 331—349; Del. G. C. L., sec. 22; Ill. G. C. L., sec. 7; Me. R. S., c. 47, sec. 37; Mass. B. C. L., secs. 15, 16; Mich. C. A., sec. 11; N. J. C. A., sec. 23; N. Y. S. C. L., sec. 54; Pa. Act of 1874, sec. 39, p. 2; Tex. R. S., sec. 668; W. Va. Code, c. 53, secs. 29—31; Wis. S., sec. 1754; P. I. C. L., secs. 38—50. Cf. *Isbester v. Murphy Mfg. Co.*, (1901) 95 Ill. App. 105. — <sup>6</sup>) *In re Long Island R. Co.*, (1837) 19 Wend. 37. — <sup>7</sup>) *Budd v. Multnomah St. Ry. Co.*, (1887) 15 Ore. 413; cf. *Raht v. Sevier Mining, etc., Co.*, (1898) 18 Utah 290. — <sup>8</sup>) *Herbert Kraft Co. v. Bank of Orland*, (1901) 133 Cal. 64. — <sup>9</sup>) *Allen v. American, etc., Assn.*, (1892) 49 Minn. 544. <sup>10</sup>) *Northwestern, etc., Assn. v. Schauss*, (1893) 148 Ill. 304. — <sup>11</sup>) See statute references, VI, C, 1, e, note 5. *Rutland R. R. Co. v. Thrall*, (1863) 35 Vt. 536. — <sup>12</sup>) *Mitchell v. Vermont Copper*

*Mining Co.*, (1876) 67 N. Y. 280. — <sup>13</sup>) Cf. Cal. Civ. Code, sec. 349; Del. G. C. L., sec. 22; Ill. G. C. L., sec. 7; Mass. B. C. L., secs. 15, 16; Mich. C. A., sec. 11; P. I. C. L., sec. 49. *Campbell v. American Alkali Co.*, (1903) 125 Fed. 207. — <sup>14</sup>) *Mills v. Stewart*, (1869) 41 N. Y. 384; cf. P. I. C. L., sec. 44. — <sup>15</sup>) Mich. C. A., sec. 11; W. Va. Code, c. 53, sec. 30; Wis. S., sec. 1754. — <sup>16</sup>) Mich. C. A., secs. 16, 24—28; Minn. R. L., sec. 2863; Pa. cf. L. 1895, p. 258, and L. 1889, p. 181; Tex. R. S., Art. 669; cf. H. & T. C. Ry. Co. v. *Bremont*, (1886) 66 Tex. 159; Vt. Public Statutes, 1906, sec. 4310; W. Va. cf. Code, c. 53, secs. 22, 39; P. I. C. L., cf. sec. 35. — <sup>17</sup>) N. Y. cf. S. C. L., sec. 51; Ala. Code, sec. 3481 (5); S. C. Civ. Code, sec. 1848. — <sup>18</sup>) *Boyd v. Redd*, (1897) 27 S. E. 35 (N. Car.). — <sup>19</sup>) *Hammond v. Hastings*, (1890) 134 U. S. 401; *Wright Lumber Co. v. Hixon*, (1899) 105 Wis. 153. — <sup>20</sup>) *Jennings v. Bank of California*, (1889) 79 Cal. 323; cf. *Craig v. Hesperia, etc., Co.*, (1896) 113 Cal. 7; *Bishop v. Globe Co.*, (1883) 135 Mass. 132. — <sup>21</sup>) *Just v. State Savings Bank*, (1903) 132 Mich. 600. — <sup>22</sup>) *Natl. Bank v. Watsontown Bank*, (1881) 105 U. S. 217.

vision in the articles. Probably the registration of the articles would in the latter case be held to be constructive notice to *bonâ fide* purchasers from shareholders<sup>1)</sup>. Where the provision is in the by-laws only, it is not valid as against *bonâ fide* purchasers without notice<sup>2)</sup>. Some jurisdictions will not allow it any validity whatever<sup>3)</sup>.

2. TRANSFER OF SHARES. — *a) Right of Transfer.* — A shareholder, except in so far as he has limited himself by contract with the company, or is limited by statute, can transfer his shares freely. In most American jurisdictions there is a strong inclination to look with disfavor on attempts on the part of the company to limit this freedom by by-law<sup>4)</sup>. A direct agreement by the shareholder to the restriction, or even a taking of the shares with knowledge of the by-law imposing the restriction, will usually be upheld<sup>5)</sup>. Of course reasonable regulations of the mode of transfer are not in this sense restrictions on free transferability. A transfer good between the transferor and the transferee may not give the transferee complete rights against the company if the company has a lien on the shares for a debt due it from the transferor<sup>6)</sup>. Nor can the transferor escape a shareholder's liability to the corporation or its creditors by a transfer made for this purpose to a transferee who, because of insolvency or incapacity, cannot assume it<sup>7)</sup>.

*b) Mode of Transfer.* — In the absence of statutory or other authorized provision specifying one exclusive method of transferring shares, they may be transferred by entry on the company's books at the request of the transferor, or under authority from him<sup>8)</sup>, or by delivery of the certificate of shares, together with a written assignment<sup>9)</sup>. In the United States a form for such assignment, with blanks for the names of the transferor and transferee, is usually printed on the back of the certificate. To-day it is a practically universal requirement in the case of business corporations that transfers to be good against all the world must be registered on the books of the company<sup>10)</sup>.

*Effect of Requirement of Registration.* — The effect of this requirement has been variously interpreted by the courts, though all agree that one principal purpose is the protection of the corporation against conflicting claimants to the rights of membership. Some courts hold that an unregistered assignment of the shares does not pass a legal, but only an equitable title to the assignee<sup>11)</sup>. The majority view, however, is that as between the parties and all claiming through them the complete legal and equitable title passes with a proper assignment, even if not yet registered<sup>12)</sup>. As between the corporation and the assignor, an unregistered transfer has no effect until registration is properly demanded<sup>13)</sup>. The assignor can be treated by the company as entitled to all the rights and liabilities of membership<sup>14)</sup>. The same thing will of course be true as between the assignor and the corporation creditors<sup>15)</sup>.

As between the assignee and subsequent purchasers from the assignor while he is still the record owner, the unrecorded assignment would of course be good against purchasers with notice of its existence<sup>16)</sup>, but the majority of courts hold that it is not good as against subsequent purchasers without notice who get their assignment registered first<sup>17)</sup>. If, however, the prior assignee holds the certificate to the shares while the first registered assignee takes title to them, the certificate holder will have a right against the corporation for the value of the shares<sup>18)</sup>.

1) Cf. R. I. Gen. Laws, c. 176, sec. 9, as amended Jan. 1906. *Dempster Mfg. Co. v. Down*, (1904) 126 Ia. 101. — 2) *Bank of Colodien v. Bank of Forsythe*, (1904) 48 S. E. 226; *Bronson Electric Co. v. Rhenbottom*, (1900) 122 Mich. 608. — 3) *Trust & Savings Co. v. Home Lumber Co.*, (1893) 118 Mo. 447; *Kinnan v. Sullivan County Club*, (1898) 50 N. Y. Supp. 95. — 4) *Ireland v. Globe Milling Co.*, (1897) 21 R. I. 9; but cf. *Barrett v. King*, (1902) 18 Mass. 476; *Moses v. Soule*, (1909) 120 N. Y. Supp. 1136, affirming s. c., (1909) 118 N. Y. Supp. 410. — 5) *Jennings v. Bank of California*, (1889) 79 Cal. 323; *New England Trust Co. v. Abbott*, (1894) 162 Mass. 148; *Morrison-Wentworth Bank v. Kerdolff*, (1898) 75 Mo. App. 297; *Williams v. Montgomery*, (1896) 148 N. Y. 519. — 6) *Bishop v. Globe Co.*, (1883) 135 Mass. 132. Cf. VI, C, 1, f.

— 7) *McDonald v. Dewey*, (1906) 202 U. S. 510; *People's Bank v. Rickard*, (1903) 139 Cal. 285. — 8) *White v. Salisbury*, (1862) 33 Mo. 150. — 9) *Boston Music Hall Assn. v. Cory*, (1880) 129 Mass. 435. — 10) See statute references in VI, C, 1, b, note 6. — 11) *Perkins v. Lyons*, (1900) 111 Ia. 192; *Hill v. Kerstetter*, (1909) 86 N. E. 858 (Ind. App.) — 12) *Westminster Bank v. Electric Works*, (1906) 73 N. H. 465. — 13) *Bank v. Stadtmuller*, (1906) 150 Cal. 106. — 14) Cf. *Russell v. Easterbrook*, (1898) 71 Conn. 50. — 15) *Hawkins v. Glenn*, (1889) 131 U. S. 319. — 16) Cf. *Continental Natl. Bank v. Eliot Natl. Bank*, (1881) 7 Fed. 369. — 17) *Spreckels v. Nevada Bank*, (1896) 113 Cal. 272. — 18) *New York, etc., R. Co. v. Schuyler*, (1865) 34 N. Y. 30; *Holbrook v. New Jersey Zinc Co.*, (1874) 57 N. Y. 616.

As between the assignee of the shares and creditors of the assignor, many jurisdictions, holding that as between the parties the assignor's title has passed to the assignee, give the assignee precedence over a creditor seeking to subject the shares to attachment or execution as property of the assignor<sup>1</sup>). Others, however, give precedence to the creditor<sup>2</sup>), unless he has notice of the unrecorded transfer<sup>3</sup>), and in a few states even though he actually has such notice<sup>4</sup>). Some states have regulated these conflicting rights of creditor and transferee by statute<sup>5</sup>).

c) *Negotiability of Share Certificates*. — Unless made so by statute<sup>6</sup>), share certificates are not negotiable in the sense that a transferor can give a *bonâ fide* purchaser a better title than he himself possesses<sup>7</sup>). Hence stock can be transferred, except in cases of transfer under judicial proceedings such as attachment, etc., only with the consent of the owner, in the absence of an estoppel against him. Unauthorized transfers by a finder, a thief, or a forger of an assignment, give no title even to a *bonâ fide* purchaser without notice of the want of authority<sup>8</sup>).

*Estoppel*. — While the owner cannot ordinarily be deprived of his stock without his consent, except by judicial process, still, if he has held out another as having full power to dispose of his stock, he is estopped, as against anyone purchasing the stock from this other in reliance on this appearance, from disputing the title he has allowed to appear to be vested in the other<sup>9</sup>). Also the corporation will be protected in issuing a new certificate to the person thus apparently vested by the true owner with power of disposition, or to a transferee of his<sup>10</sup>).

d) *Rights and Duties of the Company*. — It is the duty of the corporation to recognize a valid transfer (see VI, C, 2, a), by removing the name of the transferor and registering the transferee, and usually by issuing him a new certificate<sup>11</sup>). But the company is not bound to act immediately on presentation of the transfer. It may make reasonable regulations as to the time at which its books shall be opened for the purpose<sup>12</sup>). It may also take reasonable precautions to ascertain the validity of the transfer<sup>13</sup>), the authority of the transferor to make it<sup>14</sup>), and the willingness of the transferee to accept the transfer<sup>15</sup>). If the company refuses to recognize a valid transfer it may be compelled to do so by either the transferor<sup>16</sup>) or the transferee<sup>17</sup>). Either of these injured parties may also treat the refusal as a conversion and recover damages<sup>18</sup>). Moreover, the officer who refuses to complete the transfer on the books of the company is sometimes punishable under statute<sup>19</sup>).

On the other hand, if the company registers an invalid transfer it is liable to the true owner to restore him to its books<sup>20</sup>), or at his option to pay him damages for conversion<sup>21</sup>). The company in its turn has an action against the person who secured registration on an invalid certificate, for the loss caused to the company thereby<sup>22</sup>).

*Estoppel against the Company*. — If the company has issued a share certificate to any person, even though it was induced to do so by fraud or in reliance on a forged assignment, it is estopped from disputing the validity of the new certificate in

<sup>1</sup>) *Lund v. Wheaton Mill Co.*, (1892) 50 Minn. 36; *James v. James*, (1891) 81 Tex. 373; *Everett v. Bank*, (1908) 117 N. W. 401. — <sup>2</sup>) *Isbell v. Graybill*, (1904) 19 Colo. App. 508, *Johnston v. Lafflin*, (1880) 103 U. S. 800. — <sup>3</sup>) *Farmers' Natl. Gold Bank v. Wilson*, (1881) 58 Cal. 600. — <sup>4</sup>) *Ottumwa Screen Co. v. Stodghill*, (1897) 103 Ia. 437. Cf. *State Banking, etc., Co. v. Taylor*, (1910) 127 N. W. 590 (S. D.) — <sup>5</sup>) *Mo. R. S.*, c. 47, sec. 34; *Mass. B. C. L.*, sec. 28; *Minn. cf. R. L.*, secs. 2863, 2864; *W. Va. Code*, c. 53, sec. 37; *Wis. S.*, sec. 1751. See 2 Cook on Corporations, sec. 487. — <sup>6</sup>) See statutory provisions in note 5, supra. — <sup>7</sup>) *Shaw v. Spencer*, (1868) 100 Mass. 382; *Farmers' Bank v. Diebold Safe, etc., Co.*, (1902) 66 Ohio St. 367. — <sup>8</sup>) *Church v. Citizens', etc., Co.*, (1897) 78 Fed. 526; *East Birmingham Land Co. v. Dennis*, (1889) 85 Ala. 565. — <sup>9</sup>) *McNeil v. Tenth Natl. Bank*, (1871) 46 N. Y. 325; cf. also *Hall v. Wagner*, (1906) 97 N. Y. Supp. 570. — <sup>10</sup>) *Loring v. Salisbury*

*Mills*, (1878) 125 Mass. 38. — <sup>11</sup>) *O'Neil v. Wolcott Mining Co.*, (1909) 174 Fed. 527. — <sup>12</sup>) *Cook v. Carpenter*, (1905) 212 Pa. 177. — <sup>13</sup>) *Isbell v. Graybill*, (1904) 19 Colo. App. 508. — <sup>14</sup>) *Natl. Bank v. Natl. Broadway Bank*, (1898) 156 N. Y. 459. — <sup>15</sup>) *Russell v. Easterbrook*, (1898) 71 Conn. 50. — <sup>16</sup>) *Townsend v. Melver*, (1870) 2 S. Car. 25. But cf. *Lewis v. Bidwell Electric Co.*, (1908) 141 Ill. App. 33. — <sup>17</sup>) *Rice v. Rockefeller*, (1890) 134 N. Y. 174; *McLean v. Medicine Co.*, (1893) 96 Mich. 479. — <sup>18</sup>) *Craig v. Hesperia, etc., Co.*, (1896) 113 Cal. 7; *Ralston v. Bank of California*, (1896) 112 Cal. 208; *Herriek v. Humphrey Hardware Co.*, (1905) 103 N. W. 685; cf. *Rio Grande Cattle Co. v. Burns*, (1891) 17 S. W. (Tex.) 1043. — <sup>19</sup>) *Cal. Civ. Code*, sec. 334; *L. 1907*, c. 470; *Wis. S.*, sec. 1752. — <sup>20</sup>) *Herbert Kraft Co. v. Bank of Orland*, (1901) 133 Cal. 64. — <sup>21</sup>) *Western Union, etc., Co. v. Davenport*, (1878) 97 U. S. 369. — <sup>22</sup>) *Boston Albany R. R. Co. v. Richardson*, (1883) 135 Mass. 473.

the hands of any bona fide purchaser for value, so far as the title at the time of the issue is concerned<sup>1</sup>). If the corporation can give the bona fide holder of the certificate shares it must do so<sup>2</sup>). If it cannot because its entire authorized capital has already been issued, it must respond in damages<sup>3</sup>). The company is not estopped as against the person who presents an invalid certificate<sup>4</sup>).

**D. The Rights of the Shareholders.** — 1. IN GENERAL. — The shareholder has certain rights of participating by his vote in shaping the corporate policies and in selecting the corporate managers. He has also a right to participate in the profits of the corporate enterprise by way of dividends, and in its assets when distribution of them is lawfully made. In certain cases he has a right to invoke judicial intervention in the corporate affairs.

Moreover, he has the right to have these primary rights made effective by a proper recognition on the part of the company of his right to exercise them, and to exercise them understandingly. Hence he is entitled to information as to the conduct of the corporation, and to proper evidence of his membership in the corporation.

2. RIGHT TO EVIDENCE OF MEMBERSHIP. — Registration on the books of the company is frequently a prerequisite of the right to vote<sup>5</sup>), and in any case the shareholder has a right to such registration to define and make sure his rights<sup>6</sup>). The right to demand registration is usually expressly given by statute<sup>7</sup>).

A shareholder who has paid for his shares<sup>8</sup>) is entitled also to a certificate where the corporation gives certificates of shares to its members<sup>9</sup>). This right is frequently expressly conferred by statute<sup>10</sup>). If his original certificate is lost or destroyed a shareholder may, on giving a bond of indemnity against possible loss to the company<sup>11</sup>) demand a duplicate certificate<sup>12</sup>). Statutory remedies in the case of lost certificates are usual<sup>13</sup>).

3. RIGHT TO INSPECT THE CORPORATE BOOKS AND PAPERS. — At common law any shareholder has a right to inspect any corporate records or papers whenever such inspection is reasonably necessary to protect his interests or guide his action as a member of the corporation. His right does not extend to inspection for other purposes<sup>14</sup>). Nor does it extend beyond what is necessary to accomplish a definite and specific purpose<sup>15</sup>).

For the protection of his interests as a member of the corporation against a reasonable suspicion of fraud or mismanagement on the part of the corporate officials, he may demand access to such account books of the corporation and records of its corporate actions as bear upon the particular matter under inquiry<sup>16</sup>). For guidance in his conduct he is entitled to inspect also the articles and the by-laws of the corporation<sup>17</sup>), the minutes of its general meetings<sup>18</sup>), and the lists of its officers and members<sup>19</sup>). He must exercise the right in a reasonable way, so as not to interfere unduly with business, or endanger the safe-keeping of the records<sup>20</sup>). He is entitled to employ accountants or attorneys to act with or for him in making the inspection<sup>21</sup>).

<sup>1</sup>) Westminster Natl. Bank v. New England Electrical Works, (1906) 73 N. H. 465. — <sup>2</sup>) Ibid. and cf. Snyder v. Charlestown and S. Bridge Co., (1909) 63 S. E. 616 (W. Va.) — <sup>3</sup>) Allen v. South Boston R. R. Co., (1889) 150 Mass. 200. — <sup>4</sup>) Boston & Albany R. R. Co. v. Richardson, supra; Trimble v. Union Natl. Bank (1897) 71 Mo. App. 467. — <sup>5</sup>) Vide supra, VI, C, 1, b, note 6. — <sup>6</sup>) Hair v. Burnell, (1900) 106 Fed. 280; Rice v. Rockefeller, (1892) 134 N. Y. 174. — <sup>7</sup>) Vide statutory provisions in note 5, supra. — <sup>8</sup>) Cf. Gould v. Town of Oneonta, (1877) 71 N. Y. 298. — <sup>9</sup>) Hair v. Burnell, supra; Kinnan v. Forty-second, etc., Ry. Co., (1893) 140 N. Y. 183. — <sup>10</sup>) Vide statutory provisions in note 5, supra. — <sup>11</sup>) State ex rel. McCay v. New Orleans Stock Exchange, (1905) 38 So. 204. — <sup>12</sup>) Kinnan v. Forty-second, etc., Ry. Co., supra. — <sup>13</sup>) Cal. Civ. Code, sec. 328; Conn. P. A. 1903, c. 194, sec. 19; Del. G. C. L., secs. 69, 70; Mass.

cf. B. C. L., secs. 13, 31; Minn. R. L., sec. 2880; N. J. C. A., secs. 111—113; N. Y. S. C. L., secs. 67, 68; W. Va. Code, c. 53, sec. 38. — <sup>14</sup>) Heminway v. Heminway, (1890) 58 Conn. 443; Phoenix Iron Co. v. Commonwealth, 113 Pa. St. 563; Vanner v. Chicago City Ry. Co., Illinois, (1910) 92 N. E. 643. — <sup>15</sup>) Phoenix Iron Co. v. Commonwealth, supra; O'Hara v. National Biscuit Co., (1903) 69 N. J. L. 198; and cf. Lyon v. Screw Co., (1889) 16 R. I. 472. — <sup>16</sup>) Re Steinway, (1898) 159 N. Y. 250; Commonwealth v. Phoenix Iron Co., (1884) 105 Pa. St. 111. — <sup>17</sup>) Re Coats, (1902) 78 N. Y. Supp. 429. — <sup>18</sup>) Alabama, etc., R. R. Co. v. Rowley, (1861) 9 Fla. 508. — <sup>19</sup>) People ex rel. Stobo v. Eadie, (1892) 18 N. Y. Supp. 53; affirmed 133 N. Y. 573. — <sup>20</sup>) Kubach v. Irving Cut Glass Co., (1908) 220 Pa. St. 427. — <sup>21</sup>) Posner v. Southern, etc., Co., (1902) 33 So. 641; cf. State v. St. Louis Transit Co., (1907) 100 S. W. 1126.



The right of inspection is frequently regulated by by-laws, and in most states statutes require the keeping of certain corporate records<sup>1)</sup> and prescribe conditions to govern the right to inspect them<sup>2)</sup>. In most instances the statutory right of inspection expressly given is more extensive than the right at common law. But it is strictly interpreted by the courts, and unless expressly permitted for any purpose whatever, it is usually held to be impliedly restricted so as not to extend to examination for the purpose of injuring the corporate business or building up a rival<sup>3)</sup>. Usually a list of the shareholders must be kept<sup>4)</sup>, and this is to be open to the inspection of shareholders and in some cases of other specified classes, e. g. judgment creditors, creditors generally, and in several states the general public<sup>5)</sup>. Other records specifically required by some statutes are account books<sup>6)</sup>, minute books<sup>7)</sup>, and books of by-laws<sup>8)</sup>. Usually the statutes prescribe a penalty upon the corporation or the officer in charge or both for a refusal to comply with the requirements as to maintenance and exhibition of these records<sup>9)</sup>.

*Remedy for Denial of the Right.* — The usual remedy of a shareholder whose right of inspecting the corporate books has been denied is by petition for a writ of mandamus<sup>10)</sup>. Some jurisdictions will grant a shareholder an injunction restraining the corporation from interfering with his right<sup>11)</sup>.

4. RIGHT TO SHARE IN CONDUCTING THE BUSINESS. — a) In General. — The primary control of the corporation is vested in the shareholders collectively; for it is for them that the corporation exists<sup>12)</sup>. But the active management of the business of the corporation is almost always placed by the corporate charter in the hands of the directors, with whose *bonâ fide* discretion in its conduct the shareholders cannot interfere, either as individuals or collectively<sup>13)</sup>. Their participation, therefore, in the ordinary course of business is by means of the selection of the managers of the business<sup>14)</sup>. In certain matters, however, especially in matters affecting the constitution of the corporation, the shareholders have a direct voice, and no action can be taken until after consideration and assent by them at a corporate meeting. Moreover, if the managers are taking certain action, either beyond the corporate powers or in defraud of the interests of some or all of the shareholders, these shareholders have a limited right to interfere in the management of the corporation.

b) The Right to Vote. — The shareholder exercises his right to participate in the management of his company through his voting power. This power he possesses, in the absence of statutory restriction or limitation in the articles<sup>15)</sup>, by virtue of his ownership of shares of stock<sup>16)</sup>. At common law each shareholder had one vote.

<sup>1)</sup> Cal. Civ. Code, secs. 304, 377, 378; Conn. P. A. 1903, c. 194, sec. 18; Del. G. C. L., sec. 29; Ill. G. C. L., sec. 13; La. Const. 1898, Art. 273; Me. R. S., c. 47, sec. 20; Mass. B. C. L., sec. 30; Mich. C. A., sec. 15; Minn. R. L., secs. 2855, 2864, 2869; N. J. C. A., sec. 33, as amended P. L. 1898, p. 408; N. Y. S. C. L., sec. 32; Pa. L. 1849, p. 563, sec. 24; L. 1869, p. 71, sec. 1; Tex. R. S., arts. 662, 672; W. Va. Code, c. 53, secs. 43, 47; Acts of 1901, p. 35; Wis. S., secs. 1750, 1759; P. I. C. L., secs. 51, 52. — <sup>2)</sup> See note 1, supra, and N. J. C. A., sec. 44; Wis. S., sec. 1757. — <sup>3)</sup> State v. Jessup & Moore Paper Co., (1909) 72 Atl. 105 (Del.); State v. Monida etc., Stage Co., (1910) 110 Minn. 193. But cf. Cobb v. Lagarde, (1901) 129 Ala. 488; Weinhenmeyer v. Bitner, (1898) 88 Md. 325. — <sup>4)</sup> In all states cited in note 1. — <sup>5)</sup> In New York judgment creditors, in California and Texas creditors, in Louisiana, Minnesota, Pennsylvania, and West Virginia the public—loc. cit. supra. — <sup>6)</sup> Illinois, Michigan, West Virginia, Wisconsin, loc. cit. supra and vide Venner v. Chicago City Ry. Co., (1910) 92 N. E. 643 (Ill.); Wight v. Heublein, (1910) 111 Md. 649. — <sup>7)</sup> California, Massachusetts, Minnesota, Wisconsin, Philippine Islands, loc. cit. supra. — <sup>8)</sup> California, Massachusetts, Minnesota, loc. cit. supra.

— <sup>9)</sup> Cal. P. C., sec. 565; Conn. P. A. 1903, c. 194, sec. 39; Del. G. C. L., sec. 29; Me. R. S., secs. 21, 75; Mass. B. C. L., sec. 30; N. J. C. A., secs. 33, 44; N. Y. S. C. L., sec. 32; Pa. L. 1849, p. 563, sec. 24; Wis. S., secs. 1750a, 1757, 1759. — <sup>10)</sup> Andrews v. Mines Co., (1910) 205 Mass. 121; State v. Monida, etc., Stage Co., (1910) 110 Minn. 193; People v. Utah Gold, etc., Co., (1909) 119 N. Y. Supp. 852. — <sup>11)</sup> Cincinnati Volksblatt Co. v. Hoffmeister, (1900) 62 Ohio St. 189; contra, Trimble v. American Sugar Refining Co., (1901) 61 N. J. Eq. 340. — <sup>12)</sup> Chicago, etc., Ry. Co. v. Union Pacific Ry. Co., (1891) 47 Fed. 15; Low v. Connecticut, etc., R. Co., (1864) 45 N. H. 370; cf. Griffing Iron Co., (1898) 63 N. J. L. 168. — <sup>13)</sup> Colorado Springs Co. v. American Publishing Co., (1899) 97 Fed. 843; Manufacturers, Land, etc., Co. v. Cleary, (1905) 89 S. W. 248 (Ky.); Loewenthal v. Rubber Reclaiming Co., (1894) 52 N. J. Eq. 440. — <sup>14)</sup> Lord v. Equitable Life Assurance Society, (1909) 194 N. Y. 212. — <sup>15)</sup> People v. Koenig, (1909) 118 N. Y. Supp. 136. — <sup>16)</sup> Cf. Owensboro Seating etc. Co. v. Miller, (1908) 113 S. W. 423. Cal. Const., Art. XII, sec. 12; Civ. Code, secs. 307, 312; Conn. P. A. 1903, c. 194, secs. 10, 25, and P. A. 1905, c. 171; Del. G. C. L., sec. 17; Mass. B. C. L., sec. 24; Mich. C. A., secs. 4, 10;

Ordinarily to-day a shareholder has a vote for each share of stock he owns<sup>1)</sup>. Since this rule, however, would make possible the control of the corporation by a few persons or a single person holding a majority of the shares, statutes of two sorts have sought to overcome this difficulty. In some states a limit is placed to the number of votes a single shareholder may cast<sup>2)</sup>, and in many states "cumulative voting" is authorized in elections of directors. This allows a shareholder to cast as many votes as he has shares of stock, multiplied by the number of directors to be elected. A minority thus have, by cumulating their votes, a chance of securing some representation on the board of directors<sup>3)</sup>. Cumulative voting is in some states expressly provided for all business corporations<sup>4)</sup>, in others authorized if provided for in the corporate articles or by-laws<sup>5)</sup>.

1. *Who is Entitled to Vote.* — Ordinarily the person registered as owner of the shares on the books of the corporation is entitled to vote in respect of them<sup>6)</sup>. This is often prescribed by statute, either as a *prima facie*<sup>7)</sup> or as an absolute rule<sup>8)</sup> to guide judges in corporate elections in case of dispute. It is not necessary that the shares be fully paid for<sup>9)</sup>. If, however, the registration is of a share issued fraudulently<sup>10)</sup>, or issued in excess of the authorized capital of the corporation, the registered holder cannot vote<sup>11)</sup>; and on the other hand if a person entitled to registration has been wrongfully refused it by the corporation he has the right to vote<sup>12)</sup>. Under the rule that the registered shareholder has the right to vote, the corporation is justified in allowing the exercise of the right by vendors who have sold their stock but whose vendees have not yet completed the transfer by registration<sup>13)</sup>; so also as between pledgor<sup>14)</sup> and pledgee, mortgagor<sup>15)</sup> and mortgagee, the latter in each case can vote until the assignment has been completed on the company's books. A trustee<sup>16)</sup>, administrator<sup>17)</sup>, or executor<sup>18)</sup> ordinarily has the right to vote rather than the person whom he represents. Some states prescribe special regulations as between these claimants<sup>19)</sup>. Statutes sometimes require registration for a certain time, usually from ten days to a month, before the date of a corporate meeting, to entitle a shareholder to vote at such meeting<sup>20)</sup>, and other limitations are occasionally made<sup>21)</sup>.

Minn. R. L., secs. 2858, 2861; N. J. C. A., sec. 36; N. Y. G. C. L., secs. 2, 23; Pa. L. 1876, p. 47, sec. 1; L. 1891, p. 61, sec. 1; Tex. R. S., Art. 655; W. Va. Const., Art. XI, sec. 4; Code, c. 53, secs. 44, 49; Wis. S., sec. 1760; P. I. C. L., secs. 25, 31.

<sup>1)</sup> See statutes in preceding note. — <sup>2)</sup> N. H. P. S., c. 149, sec. 19; Va. Corp. Act 1903, c. 5, secs. 17 and 20; Wash. Ballington's Code, sec. 4255; cf. Bartlett v. Fourton, (1905) 115 La. 26. — <sup>3)</sup> Cf. Chicago Macaroni Mfg. Co. v. Boggiano, (1903) 202 Ill. 312; Schwartz v. State, (1900) 61 Ohio St. 497. — <sup>4)</sup> Cal. Civ. Code, sec. 307; Del. cf. G. C. L., sec. 5 (8); Ill. Const., Art. XI, sec. 3; G. C. L., sec. 3; Mich. P. A. 1885, No. 112, as amended by P. A. 1907, No. 141; Minn. cf. R. L., sec. 2862; N. J. P. L. 1900, p. 418; N. Y. cf. G. C. L., sec. 24; Pa. Const., Art. XVI, sec. 4; L. 1876, p. 47, sec. 1; cf. Pierce v. Commonwealth, (1883) 104 Pa. St. 150; W. Va. Const., Art. XI, sec. 4; Code, c. 53, sec. 44; P. I. C. L., sec. 31.

— <sup>5)</sup> Vide provisions in New Jersey and New York statutes, note 4, supra. — <sup>6)</sup> Royal Consolidated Mining Co. v. Royal Consolidated Mines Co., (1910) 110 Pac. 123 (Cal.); Haynes v. Griffith, (1909) 101 Pac. 728 (Idaho); Blinn v. Gillett, (1904) 208 Ill. 473; Haskell v. Read, (1903) 68 Neb. 107. — <sup>7)</sup> Conn. P. A. 1903, c. 194, sec. 18; Me. cf. R. S., 13, 18, 20, 35; Mass. cf. B. C. L., secs. 28, 30; Pa. L. 1893, p. 141, sec. 1. — <sup>8)</sup> Cal. Civ. Code, sec. 312, cf. Smith v. San Francisco, etc., Ry. Co., (1897) 115 Cal. 584; Market St. Ry. Co. v. Hellman, (1895) 109 Cal. 571; Middleton v. Arastraville Mining Co., (1905) 146 Cal. 219; Del. G. C. L., sec. 19; Mich. cf. McClean v. Medicine Co., (1893) 96 Mich. 479; Minn. cf. R. L., sec. 2863;

N. J. C. A., sec. 33, as amended P. L. 1898, p. 408, sec. 40; N. Y. S. C. L., sec. 32; G. C. L., secs. 23, 31; W. Va. Code, c. 53, sec. 19; Wis. cf. S., secs. 1750, 1751; P. I. C. L., sec. 31. Cf. In re Election of Directors of Cedar Grove Cemetery Co., (1898) 61 N. J. L. 422. —

<sup>9)</sup> Downing v. Potts, (1851) 23 N. J. L. 66; Haskell v. Read, (1903) 68 Neb. 107. —

<sup>10)</sup> Hilles v. Parrish, (1862) 14 N. J. Eq. 280. —

<sup>11)</sup> People v. Parker, etc., Coal Co., (1854) 10 How. Pr. 543. — <sup>12)</sup> Mitchell v. Colorado Fuel & Iron Co., (1902) 117 Fed. 723; Noller v. Wright, (1904) 138 Mich. 416. — <sup>13)</sup> Lucas v. Milliken, (1905) 139 Fed. 816; People v. Robinson, (1883) 64 Cal. 373; Re Argus Co., (1893) 138 N. Y. 557. — <sup>14)</sup> Market St. Ry. v. Hellman, (1895) 109 Cal. 571; State v. Smith, (1887) 15 Ore. 98; and cf. Hoppin v. Buffum, (1870) 9 R. 1. 513. — <sup>15)</sup> Vowell v. Thompson, (1829) 3 Cranch C. C. 428. —

<sup>16)</sup> Market St. Ry. v. Hellman, (1895) 109 Cal. 571. — <sup>17)</sup> Jones v. Green, (1901) 129 Mich. 203. —

<sup>18)</sup> Schmidt v. Mitchell, (1897) 101 Ky. 570; In re Cape May & D. B. N. Co., (1888) 51 N. J. L. 78. — <sup>19)</sup> Cal. Civ. Code, sec. 313; Conn. P. A. 1903, c. 194, sec. 25, and P. A. 1905, c. 171; Del. G. C. L., sec. 8; Ill. G. C. L., sec. 24; Mass. B. C. L., sec. 29; Minn. R. L., sec. 2881; N. J. C. A., sec. 37; N. Y. G. C. L., sec. 23; Pa. L. 1893, p. 141, sec. 1; L. 1905, p. 42; and cf. Commonwealth v. Patterson, (1893) 158 Pa. St. 476; Wis. S., sec. 1760. —

<sup>20)</sup> Cal. Civ. Code, sec. 312; L. 1907 (10 days); Del. G. C. L., sec. 18 (20 days); N. J. C. A., sec. 36 (20 days). — <sup>21)</sup> N. Y. cf. G. C. L., sec. 23; Pa. cf. L. 1889, p. 180.

2. *Proxies.* — **a) IN GENERAL.** — At common law the right to vote had to be exercised in person<sup>1)</sup>. To-day, however, usually by statute<sup>2)</sup>, the power to appoint an agent to exercise the right of voting is granted, sometimes with some restrictions, to stockholders, and it is generally held that even in the absence of statute a by-law can confer this privilege<sup>3)</sup>. It enables a corporation which owns stock to appoint a representative to vote this stock<sup>4)</sup>. The power of attorney authorizing another to represent the shareholder is called a proxy.

In the absence of statute or other express requirement, no particular form is required<sup>5)</sup>, but if one is prescribed by the corporation or statute it should be followed<sup>6)</sup>.

**b) AUTHORITY OF AGENT UNDER A PROXY.** — Unless the power of attorney is expressly limited by its terms the agent has authority under it to do any of the things his principal as shareholder could have done in person at the meeting<sup>7)</sup>. But a proxy in general terms has been held to give power only to vote in the conduct of the corporate business, and not to vote upon constitutional questions such as the dissolution of the corporation<sup>8)</sup> or its reorganization<sup>9)</sup>.

**c) EXPIRATION OF PROXIES.** — Statutes frequently provide that a proxy will not be good longer than a certain time or after a certain date<sup>10)</sup>. The proxy may itself put a period for its duration. If neither of these conditions exists the proxy is good until revoked<sup>11)</sup>.

**d) REVOCATION.** — A proxy, like any other similar power of attorney, is revoked by the principal's death, by his transfer of the stock it covers, or by his expressed will to revoke it<sup>12)</sup>. Even if in terms its period has not expired, or it is made irrevocable, it may be thus revoked<sup>13)</sup> unless the agent who has been given the irrevocable power has some interest in the subject-matter to be affected by its exercise<sup>14)</sup>. Even in such a case some jurisdictions regard the severance of the voting power from the ownership thus effectuated as per se against public policy, and unenforceable either as against the corporation or even as between the parties themselves<sup>15)</sup>. Statutes occasionally make this the law<sup>16)</sup>.

3. *Contracts Restricting the Right to Vote.* — **a) IN GENERAL.** — Shareholders may vote as their own individual interest dictates<sup>17)</sup>. They are not bound to vote for the best interests of the corporation. But they cannot sell their vote outright; nor can they combine to work for their individual interests whenever these interests are adverse to those of the corporation<sup>18)</sup>. Such combination is a fraud on the corporation and the minority of the shareholders<sup>19)</sup>. They can, however, combine to work for the best interests of the corporation, and may agree to vote their shares together for a

<sup>1)</sup> Commonwealth v. Brighthurst, (1883) 103 Pa. St. 134; McKee v. Home Savings and Trust Co., (1904) 122 Ia. 731. — <sup>2)</sup> Cal. Civ. Code, sec. 321b; Conn. P. A. 1903, c. 194, sec. 25; P. A. 1905, c. 171; Del. G. C. L., sec. 17; Ill. G. C. L., sec. 3; Mass. B. C. L., sec. 24; Mich. C. A., sec. 10; Minn. R. L., sec. 2861; N. J. C. A., sec. 17, amended P. L. 1901, sec. 260; N. Y. G. C. L., sec. 26; Pa. L. 1903, p. 14, sec. 1; Wis. S., sec. 1760; P. I. C. L., cf. sec. 21. — <sup>3)</sup> Commonwealth v. Detwiller, (1890) 131 Pa. St. 614; and cf. Walker v. Johnson, (1900) 17 App. Cas. D. C. 144. — <sup>4)</sup> State v. Rohlfis, (New Jersey, 1890) 79 Atl. 1099. — <sup>5)</sup> St. Lawrence Steamboat Co., (1882) 44 N. J. L. 529. — <sup>6)</sup> Cal. Civ. Code, sec. 321b; Conn. P. A. 1903, c. 194, sec. 25; P. A. 1905, c. 171; Mich. C. A., sec. 10; N. J. C. A., sec. 17; N. Y. G. C. L., secs. 26, 27; Pa. L. 1903, p. 14, sec. 1; Act of March 28, 1820, sec. 1. — <sup>7)</sup> Columbia Natl. Bank v. Matthews, (1898) 85 Fed. 934. <sup>8)</sup> McKee v. Home Savings & Trust Co., (1904) 122 Ia. 731. — <sup>9)</sup> Farish v. Cieneguita Copper Co., (1909) 100 Pac. 781. — <sup>10)</sup> Cal. Civ. Code, sec. 321b (eleven months to seven years); Conn. P. A. 1903, c. 194, sec. 25; P. A. 1905, c. 171 (eleven months or express limit); Del. G. C. L., sec. 17 (three years); Mass. B. C. L.,

sec. 21 (six months); Minn. R. L., sec. 2861 (one year); N. J. C. A., sec. 36 (three years); N. Y. G. C. L., sec. 26 (eleven months); Pa. L. 1903, p. 14, sec. 1 (two months). — <sup>11)</sup> Mousseaux v. Urquhart, (1867) 19 La. Ann. 482. — <sup>12)</sup> Cf. Cal. Civ. Code, sec. 321b; Del. G. C. L. sec. 17; N. Y. G. C. L., sec. 26; and Schmidt v. Mitchell, (1897) 101 Ky. 570. In re Schwartz and Gray, (1909) 72 Atl. 70. — <sup>13)</sup> Schmidt v. Mitchell, supra; Griffith v. Jewett, (1886) 15 Weekly Law Bulletin (Ohio) 419; Vanderbilt v. Bennett, (1887) 6 Pa. Co. Ct. 193. — <sup>14)</sup> Hey v. Dolphin, (1895) 36 N. Y. Supp. 627; Chapman v. Bates, (1900) 61 N. J. Eq. 658; cf. Reed v. Bank of Newburgh, (1837) 6 Paige 337 (N. Y.). — <sup>15)</sup> Cf. Kennedy v. Monarch, etc., Co., (1904) 123 Ia. 344; Clowes v. Miller (1900) 60 N. J. Eq. 179; Starbuck v. Mercantile Trust Co., (1901) 60 Conn. 553. — <sup>16)</sup> Cf. statutes cited in note 12, supra. — <sup>17)</sup> Farmers' Loan & Trust Co. v. Chicago, etc., Ry., (1896) 163 U. S. 31, 44; Blinn v. Gillett, (1904) 208 Ill. 473; and vide infra, VI, D. 4, d. — <sup>18)</sup> Snow v. Church, (1897) 42 N. Y. Supp. 1072, and vide infra, VI, D. 6, c. — <sup>19)</sup> Wilbur v. Stoeppel, (1890) 82 Mich. 344; Bosworth v. Allen, (1901) 168 N. Y. 157; Fremont v. Stone, (1864) 42 Barb. 169; and vide infra, VI, D. 6, C.

particular policy. The test of the validity of such an agreement is whether it could reasonably be deemed to be for the benefit of the corporation<sup>1</sup>).

The desire to secure the permanence of such combinations, for the enforcement of some policy deemed in the interest of the corporation, has led to agreements between shareholders to vote during some period of time in a certain way or for certain directors; and as between these shareholders such agreements will in many states be enforced if their purpose is valid<sup>2</sup>). The same end has been sought through agreements not to transfer the shares from their present owners who are in agreement as to some particular policy to outsiders, without consulting the other members of the combination, or without giving them the first opportunity to buy shares<sup>3</sup>). Another plan has been to give proxies, irrevocable in terms, to persons who are to vote the stock<sup>4</sup>). Of course no one of these agreements is binding on a bona fide purchaser of the stock without notice<sup>5</sup>). But as between the members agreeing together they should all be dealt with in the same way, and their validity made to turn on the ends of the contracting parties. Whether the corporation should be bound to recognize the contract if a registered shareholder repudiating it demands the right to vote is in conflict<sup>6</sup>).

**b) VOTING TRUSTS.** — The most successful device to accomplish the ends sought is a voting trust, a plan by which the shares of the consenting shareholders are transferred to trustees in return for trust certificates by which the trustees make a declaration of trust in favor of the original shareholders. Under this the shareholder gets the dividends and all the other beneficial incidents of stock ownership except the power of voting at shareholders' meetings. The trustees, who are the legal owners of the shares and registered on the books of the company, can by their votes carry out the policy desired, irrespective of changes of mind on the part of the shareholders concerned. The validity of such an arrangement is now, in probably a majority of the states, made to turn on the legitimacy of the end in view<sup>7</sup>). Some jurisdictions, however, hold all such trusts illegal and void even when the ends are not in themselves illegal<sup>8</sup>). In New York voting trusts for a limited period are legalized by express statute<sup>9</sup>).

**4. Corporate Acts as to which Vote by Shareholders is Required.** — **a) IN GENERAL.** — Although, as has been stated, the participation by the shareholders of a corporation in the ordinary management of the corporate business is confined to the selection of its managers, there are certain transactions on behalf of the corporation of such a character that they must be brought before the shareholders for their consideration and assent in order to become valid. Action on these matters if taken by the directors alone will not be binding on the corporation. In general these transactions are such as either affect the constitution of the corporation or by reason of their essential importance demand special deliberation, even though they do not involve an amendment of the corporate constitution.

**b) ENUMERATION OF PARTICULAR ACTS.** — Matters of these sorts are usually specified and regulated by statutes. They include the election and sometimes the classification of directors, and changes in the number of directors; the amendment of the corporate articles, and in some states the making or amendment of by-laws; the increase or decrease of the corporate capital stock; the changing of the par value of the shares of stock; the creation of special forms of stock, e. g. preferred shares; the consolidation or merger with other corporations; the extension of the corporate existence; and the voluntary dissolution of the corporation. In some states the shareholders must pass upon still other matters, such as the mortgage or sale of the corporate property, and the conversion of bonds into stock. The proportion of votes required to initiate or

1) Weber v. Della, etc., Mining Co., (1908) 14 Idaho 404; Faulds v. Yates, (1870) 57 Ill. 416; Chapham v. Bates, (1900) 61 N. J. Eq. 658. — 2) Smith v. San Francisco & N. P. Ry. Co., (1897) 115 Cal. 584. — 3) Jones v. Brown, (1898) 171 Mass. 318; Havemeyer v. Havemeyer, (1881) 86 N. Y. 618, affirming s. c., (1879) 45 N. Y. Super. Ct. 464; Boswell v. Buhl, (1906) 213 Pa. St. 450. — 4) Whitehead v. Sweet, (1899) 126 Cal. 67; Chapman v. Bates, (1900) 61 N. J. Eq. 658. — 5) Brinkerhoff-Farris, etc., Co. v. Home Lumber Co., (1893)

118 Mo. 447; cf. Senn v. Union, etc., Co., (1906) 115 Mo. App. 685. — 6) Cf. Smith v. San Francisco & N. P. Ry. Co., supra, and Sylvania, etc., R. R. v. Hoge, (1907) 59 S. E. 806 (Ga.). — 7) Brightman v. Bates, (1900) 175 Mass. 105; Boyer v. Nesbitt, (1910) 227 Pa. St. 398; Carnegie Trust Co. v. Security Life Ins. Co., etc., (1910) 68 S. E. 412 (Va.). — 8) Moses v. Scott, (1888) 84 Ala. 608; Harvey v. Linville Improvement Co., (1896) 118 N. C. 693. — 9) N. Y. G. C. L., sec. 25.

validate corporate action varies with the particular act to be done, and also the requirements in this regard of the different statutes on a given matter are widely different, ranging from unanimous action to action by a mere majority.

c) **CONTROL OVER BOARD OF DIRECTORS: ELECTION, CLASSIFICATION, CHANGE OF NUMBER.** — The election of directors is elsewhere considered<sup>1</sup>). A majority of votes is all that is required to elect. Although the classification of directors as to their term of office in order to secure a measure of continuous existence for the board is a matter which, under most statutes, must be stipulated for in the articles<sup>2</sup>), in some states the shareholders have power by resolution or by-laws to effect such a classification<sup>3</sup>). Statutes also in some states provide a means by which shareholders can change the number of directors without going through the steps necessary to amend the articles<sup>4</sup>).

d) **THE AMENDMENT OF THE CORPORATE CHARTER.** — a) **In General.** — Practically all the states now reserve to the legislature the power to alter, amend, or repeal charters granted by them to corporations<sup>5</sup>). The legislatures have granted in most states to the shareholders of the corporation, by vote of some specified majority, the power to alter the corporate charter. Sometimes the alteration has to have favorable action on the part of the board of directors as well as the shareholders<sup>6</sup>). Without this statutory authority no change in the charter can be made against the dissent of any shareholder<sup>7</sup>). The statutes sometimes expressly limit the power of amendment to alterations which do not substantially change the purposes of the corporation<sup>8</sup>). Even where no express limit is set, it is probable that the power will not extend to changes which would in effect create a new corporation<sup>9</sup>). The shareholders' contract with the corporation under the statute was in contemplation of changes which were mere alterations<sup>10</sup>), but not of those which made the associates members of an entirely different body.

1. **Changes of Capital Stock.** — a) **IN GENERAL.** — The articles of incorporation must, under most incorporating acts, set forth the amount of the nominal or share capital of the corporation<sup>11</sup>). This amount can be changed by the corporation only under statutory authority<sup>12</sup>). An attempted increase of capital by the issue of shares in excess of the amount authorized is void<sup>13</sup>). The new shares are worthless<sup>14</sup>), and payments made on account of them may be recovered back. The former shares are not affected by the issue<sup>15</sup>). Statutory authority to change capital stock is usually provided by statutes authorizing increase, decrease, and change in the par value of shares.

b) **INCREASE OF CAPITAL STOCK: IN GENERAL.** — Most general incorporation laws provide means by which the corporations organized under them can increase their

<sup>1</sup>) Vide V. C. 2. — <sup>2</sup>) Conn. P. A. 1903, c. 194, sec. 10; La. cf. R. S., sec. 685; Mass. B. C. L., sec. 18; Minn. R. L., sec. 2860; N. J. C. A., sec. 12; N. Y. S. C. L., sec. 25; Wis. S., sec. 1776. — <sup>3</sup>) Del. G. C. L., sec. 9; Ill. G. C. L., sec. 3; Me. R. S., c. 47, sec. 19; Pa. L. 1887, p. 411. Such classification is expressly forbidden in Michigan. Mich. P. A. 1885, No. 112, as amended P. A. 1907, No. 141. — <sup>4</sup>) Del. G. C. L., sec. 2 (6); Ill. Act of May 22, 1887, secs. 1—5; Me. R. S., c. 47, sec. 39; Mass. B. C. L., sec. 13; Minn. cf. R. L., sec. 2852 (5) N. Y. S. C. L., sec. 26, as amended by L. 1909, c. 421; Pa. L. 1891, p. 61, sec. 1; L. 1901, p. 80; Tex. R. S., Art. 651, as amended by G. L. 1907, p. 301; W. Va. c. 53, sec. 49; P. I. C. L., sec. 13 (7). — <sup>5</sup>) Vide infra, XIII, A, and B. — <sup>6</sup>) Cal. Civ. Code, sec. 362; Conn. P. A. 1903, c. 194, secs. 73, 74; Del. G. C. L., sec. 25; sec. 26, as amended Apr. 5, 1909; Ill. Act of March 26, 1872, secs. 1—7; La. R. S. 1870, sec. 687; Me. cf. R. S., c. 47, sec. 45 and sec. 47 as amended by P. L. 1907, c. 154; Mass. B. C. L., secs. 40, 41; Mich. C. A., sec. 17; Minn. R. L., sec. 2871; N. J. P. L. 1898, p. 407; P. L. 1899, p. 174; C. A., sec. 27, amended P. L. 1908, p. 127, and sec. 28, amended P. L. 1898, p. 149,

and P. L. 1908, p. 127; N. Y. G. C. L., sec. 7; S. C. L., sec. 18; Pa. L. 1883, p. 122; L. 1905, p. 93; Tex. R. S., Arts. 647—650; W. Va. Code, c. 54, sec. 10; amended 1901 Acts, 35; Wis. S., sec. 1774; L. 1905, p. 941; P. I. C. L., sec. 18. — <sup>7</sup>) *Clearwater v. Meredith*, (1863) 1 Wall. 25; *Harding v. American, etc., Co.*, (1899) 182 Ill. 551; *Richards v. Minnesota Savings Bank*, (1899) 75 Minn. 196; *Livingston v. Lynch*, (1820) 4 Johns. Chanc. 573. — <sup>8</sup>) Cf. *New York and Pennsylvania* in note 6, supra, and *State v. Taylor*, (1896) 55 Ohio St. 61. — <sup>9</sup>) *Commonwealth v. Licking Valley Building Assn.*, (1904) 82 S. W. 435 (Ky.). — <sup>10</sup>) *Smith v. Eastwood Wire Mfg. Co.*, (1899) 58 N. J. Eq. 331. — <sup>11</sup>) Vide supra, II, F, 7. — <sup>12</sup>) *Laredo Imp. Co. v. Stevenson*, (1895) 66 Fed. 633; *Grangers' Life, etc., Ins. Co. v. Kamper*, (1882) 73 Ala. 325; *State v. Morristown Fire Assn.*, (1851) 23 N. J. Law 195. — <sup>13</sup>) Cf. *Scovill v. Thayer*, (1881) 105 U. S. 143. — <sup>14</sup>) *People ex rel. Jenkins v. Parker Vein Coal Co.*, (1854) 10 How. Pr. 543 (N. Y.); cf. *N. Y. & N. H. R. Co. v. Schuyler*, (1865) 34 N. Y. 30. — <sup>15</sup>) *Byers v. Rollins*, (1889) 13 Colo. 22.

stock<sup>1</sup>), either to a limited extent or at the discretion of the corporation. This power to effect the increase is usually conferred upon the corporation; and this means that the shareholders must be consulted<sup>2</sup>). The change is too fundamental to be left to the directors unless, as sometimes is the case, it is expressly conferred on them in the charter<sup>3</sup>), or by vote of the shareholders at a corporate meeting<sup>4</sup>). Sometimes the increase must be effected by the forms prescribed for amending the charter; sometimes a special method is provided.

c) COMPLIANCE WITH THE STATUTE PERMITTING INCREASE. — If the statute prescribes the steps to be taken in making an increase in share capital, the prescription should be carefully followed to insure the entire validity of the act<sup>5</sup>). The corporation itself will, however, in most American jurisdictions, be held to be estopped from taking any advantage of irregularities in its compliance<sup>6</sup>), and so also will those subscribers to the issue who have comported themselves as shareholders<sup>7</sup>). On the other hand, the corporation cannot compel a subscriber to take the shares<sup>8</sup>), nor enforce a contract conditioned on an increase of capital unless it is shown that the statute has been complied with<sup>9</sup>).

d) SUBSCRIPTIONS FOR NEW STOCK. — 1. In General. — In general, a subscriber for an increased issue of shares is subject to the rules governing subscribers to the original issue. But the increase need not be entirely subscribed for to enable the corporation to hold him on his contract of subscription<sup>10</sup>), unless this contract expressly makes the subscription of the entire amount a condition of the contract<sup>11</sup>). On the other hand, he does not become entitled to the rights of a shareholder until he has paid the amount of his subscription<sup>12</sup>).

2. Rights of Existing Shareholders with respect to New Shares: Right of Pre-emption. — Persons who are entitled to recognition as shareholders at the time of an authorized increase of capital stock<sup>13</sup>) have a pre-emptive right to subscribe to the new issue in proportion to the number of shares they already hold<sup>14</sup>), before new subscriptions can be accepted by the corporation. The right exists independently of statute<sup>15</sup>). It may, however, be rendered inapplicable by special provisions in a charter, or by special agreements in a particular case<sup>16</sup>). The cases are not in accord as to the terms on which the shareholder may subscribe in the absence of statutory regulation. Probably a majority of jurisdictions will allow him a right to subscribe at par, at any rate where the right is given by statute without further specification<sup>17</sup>),

<sup>1</sup>) Cal. Civ. Code, sec. 359, L. 1907; Conn. P. A. 1903, c. 194, sec. 74; cf. secs. 61, 71; Del. G. C. L., sec. 26, as amended Apr. 5, 1909; cf. secs. 25 and 27; Ill. Act of March 26, 1872, secs. 1—7; La. Const. 1898, Art. 267; Act 149 of 1898, p. 263; Me. R. S., c. 47, sec. 39; Mass. B. C. L., secs. 40, 42, 89 as amended L. 1907, c. 396; Mich. C. A., sec. 2 (9), as amended Act No. 146 of 1907, sec. 17; Minn. R. L., secs. 3068, 2871; N. J. P. L. 1898, p. 407; C. A., sec. 27, as amended by P. L. 1908, p. 127; C. A., sec. 28, as amended by P. L. 1898, p. 149 and P. L. 1908, p. 127; N. Y. S. C. L., secs. 62—64; Pa. L. 1905, p. 280; L. 1901, p. 3, secs. 2 and 3; Tex. R. S., Art. 652; G. L., sec. 3, p. 309, Acts 1907; W. Va. Code, c. 54, sec. 21, amended 1901 Acts, 35, 1903 Acts, 3; Code, c. 54, sec. 22, amended 1901 Acts, 35; Wis. S., sec. 1774; L. 1905, p. 941; Pl. C. L., sec. 17, as amended Act No. 1895, May 17, 1909. — <sup>2</sup>) Railway Co. v. Allerton, (1873) 18 Wall. 233; Humboldt Driving Park Assn. v. Stevens, (1892) 34 Neb. 528. — <sup>3</sup>) Sutherland v. Olcott, (1884) 95 N. Y. 93. — <sup>4</sup>) Eidman v. Bowman, (1871) 58 Ill. 444. — <sup>5</sup>) Navajo Mining & Development Co. v. Curry, (1905) 147 Cal. 581; cf. Jones v. Concord & Montreal R., (1891) 67 N. H. 119, 234. — <sup>6</sup>) Manufacturers' Paper Co. v. Allen-Higgins Co., (1907) 154 Fed. 906; Barrows v. Natchaug Silk Co., (1900) 72 Conn.

658. — <sup>7</sup>) Handley v. Stutz, (1891) 139 U. S. 417, 424—426; Hoeft v. Kock, (1900) 123 Mich. 171; Pope v. Merchants' Trust Co., (1907) 103 S. W. 792. — <sup>8</sup>) Smith v. Franklin Park, etc., Co., (1897) 168 Mass. 345. — <sup>9</sup>) Pacific Mill Co. v. Inman Poulsen & Co., (1907) 90 Pac. 1099. — <sup>10</sup>) Scott v. Deweese, (1901) 181 U. S. 202; Nutter v. Lexington, etc., R. R. Co., (1856) 6 Gray 85; Popo v. Merchants' Trust Co., supra. — <sup>11</sup>) Hahn's appeal, (Pennsylvania, 1886) 7 Atl. 482. — <sup>12</sup>) Baltimore City Passenger Ry. Co. v. Hambleton, (1893) 77 Md. 341; St. Paul, Stillwater & T. F. R. Co. v. Robbins, (1877) 23 Minn. 439. — <sup>13</sup>) Jones v. Concord & Montreal R., (1892) 67 N. H. 119, 234; Miller v. Illinois Central R. Co., (1857) 24 Barb. 312; cf. Real Estate Trust Co. v. Bird, (1899) 90 Md. 229, 245. — <sup>14</sup>) Way v. American Grease Co., (1900) 60 N. J. Eq. 263; cf. Reese v. Bank of Montgomery, (1855) 31 Pa. St. 78. — <sup>15</sup>) Jones v. Morrison, (1883) 31 Minn. 140. — <sup>16</sup>) Weidenfeld v. Northern Pacific R. Co., (1904) 129 Fed. 306; Ohio Ins. Co. v. Nunnemacher, (1860) 15 Ind. 294; Meredith v. New Jersey Zinc & Iron Co., (1897) 56 N. J. Eq. 454; Einstein v. Rochester Gas & Electric Co., (1895) 146 N. Y. 46. — <sup>17</sup>) Hammond v. Edison Electric Co., (1902) 131 Mich. 79; Electric Co. of America v. Edison Electric, etc., Co., (1901) 200 Pa. St. 516.

but in New York at least, the majority of shareholders can direct that subscriptions shall be at the price obtainable in the market for the stock<sup>1</sup>).

A shareholder can waive his right to take new shares<sup>2</sup>), or assign it to anyone<sup>3</sup>). He can lose it by his laches<sup>4</sup>).

3. Remedies of Shareholders for Denial of Right — If the corporation does not give the shareholder his right of pre-emption, so long as the company has shares on hand he can compel it to let him subscribe<sup>5</sup>). Or he may recover damages, and this remedy will be open to him even if all the stock has already been issued to bona fide purchasers<sup>6</sup>).

4. Extent of the Right. — The right of pre-emption does not extend to re-issued shares<sup>7</sup>), nor to shares originally authorized but hitherto unsubscribed<sup>8</sup>). But shareholders may be given a first chance to subscribe for such shares, and if so all must be given an equal opportunity<sup>9</sup>).

e) REDUCTION OF CAPITAL STOCK. — 1. In General. — It is frequently desirable to enable a company to reduce its nominal capital, either to conform the nominal capital to the actual capital of the corporation or to permit a distribution among shareholders of actual capital not necessary in the corporate business. Such reduction is distinguishable from repurchase or acceptance by the corporation of shares it has issued, so long as these are not cancelled by the corporation<sup>10</sup>). To be valid, a reduction of the amount of the capital stock fixed in the constating instruments of the corporation must have express authorization in the statute<sup>11</sup>). Statutes permitting a reduction of capital stock are general, however<sup>12</sup>). They usually prescribe the mode in which the reduction should be made, and in various ways safeguard the rights of creditors and minority shareholders<sup>13</sup>).

2. Methods of Reduction. — The capital stock may be reduced by the cancellation of unissued shares or shares previously acquired by the corporation by forfeiture or gift, or by the purchase and cancellation of outstanding shares<sup>14</sup>). If, however, outstanding shares are purchased, all shareholders must be afforded equal opportunity to retire their stock<sup>15</sup>). The statutes usually make some prescription of methods and should be substantially followed<sup>16</sup>).

3. Effect of Reduction. — When a reduction of capital stock takes place, the shares retired are cancelled for every purpose. Their former holders are not liable to creditors under a statutory liability arising from ownership of these shares; nor are the remaining shareholders subject to the claims of creditors against the company because of the retired shares<sup>17</sup>). But the reduction of the capital stock must not prejudice the

<sup>1</sup>) *Stokes v. Continental Trust Co.*, (1906) 186 N. Y. 285. — <sup>2</sup>) *Hall v. Hall*, (1908) 30 Ohio Circ. Ct. 826; *Hoyt v. Shenango Valley Steel Co.*, (1903) 207 Pa. St. 208. — <sup>3</sup>) *Stokes v. Continental Trust Co.*, (1906) 186 N. Y. 285. — <sup>4</sup>) *Crosby v. Stratton*, (1902) 7 Colo. App. 212; *Hoyt v. Shenango Valley Steel Co.*, supra. — <sup>5</sup>) *Snelling v. Richard*, (1909) 166 Fed. 635; *Hammond v. Edison, etc., Co.*, (1902) 131 Mich. 79. — <sup>6</sup>) *Stokes v. Trust Co.*, supra. — <sup>7</sup>) *Crosby v. Stratton*, supra. — <sup>8</sup>) *Curry v. Scott*, (1867) 54 Pa. St. 270; cf. *Way v. American Grease Co.*, (1900) 60 N. J. Eq. 263. — <sup>9</sup>) *Reese v. Bank of Montgomery*, (1855) 31 Pa. St. 78. — <sup>10</sup>) Cf. *Crandall v. Lincoln*, (1884) 52 Conn. 73; and cf. *Tulare Irrigation Dist. v. Kaweah Canal & Irrigation Co.*, (1896) 44 Pac. 662 (Cal.). — <sup>11</sup>) *Seignouret v. Home Ins. Co.*, (1885) 24 Fed. 332; *Kassler v. Kyle*, (1901) 28 Colo. 374; *Maryland Trust Co. v. Natl. Mechanics' Bank*, (1906) 102 Md. 608. — <sup>12</sup>) Cal. Civ. Code, sec. 359, L. 1907; Conn. P. A. 1903, c. 194, secs. 6, 7, 73, 74; Del. G. C. L., sec. 26, as amended Apr. 5, 1909; sec. 28; Ill. Act of March 26, 1872, secs. 1—7; La. Const. of 1898, sec. 267; Act No. 149 of 1898, p. 263; Me. R. S., c. 47, secta. 40—44; Mass. B. C. L., secs. 40, 41, 43; Mich. C. A., sec. 2, as amended by Act No. 146 of 1907; C. A.,

sec. 17; Minn. R. L., sec. 2871; N. J. P. L. 1898, p. 407; C. A., sec. 27, as amended by P. L. 1908, p. 217; C. A., sec. 28, as amended by P. L. 1898, p. 149 and P. L. 1908, p. 127; C. A., sec. 29; N. Y. S. C. L., secs. 62—64; Pa. L. 1905, p. 264; L. 1893, p. 351; Tex. G. L., sec. 3, p. 311, Acts of 1907; W. Va. Code, c. 54, sec. 21, amended 1901 Acts 35, 1903 Acts 3; sec. 22, amended 1901 Acts 35; Wis. S., sec. 1774, L. 1905, p. 941; P. I. C. L., sec. 17, as amended Act No. 1895, May 17, 1909. — <sup>13</sup>) Vide e. g. Conn. P. A. 1903, sec. 6; Del. G. C. L., sec. 28; Me. R. S., c. 47, secs. 40—44; Mass. B. C. L., sec. 43; and cf. *American Steel Co. v. Eddy*, (1902) 130 Mich. 266; *Alexander v. Relfe*, (1881) 74 Mo. 495; *Roberts v. Roberts-Wicks Co.*, (1906) 184 N. Y. 257; *Theiss v. Durr*, (1905) 125 Wis. 651. — <sup>14</sup>) *Shoemaker v. Washburn Lumber Co.*, (1897) 97 Wis. 585. — <sup>15</sup>) *Currier v. Lebanon Slate Co.*, (1875) 56 N. H. 262; *Berger v. U. S. Steel Corporation*, (1902) 63 N. J. Eq. 809; *Theiss v. Durr*, (1905) 125 Wis. 651. — <sup>16</sup>) *Ferris v. Ludlow*, (1856) 7 Ind. 517; cf. *Gade v. Forest Glen Brick & Tile Co.*, (1897) 165 Ill. 367. — <sup>17</sup>) *Moon Bros. Carriage Co. v. Waxahachie Grain etc. Co.*, (Texas, 1896) 35 S. W. 337, affirmed (1896) 89 Tex. 511.



rights of existing creditors. A corporation cannot retire shares so as to release their holders as against such creditors from the obligation to pay up what remains unpaid on their subscription<sup>1</sup>). Nor can it retire shares by paying for them with assets of the corporation if thereby it impairs the security of the creditors against the corporation<sup>2</sup>).

Where the reduction of capital stock is for the purpose of shrinking the normal capital to the actual capital because of some loss of the actual capital, the cost should be borne by the class of stock that would have to bear it in case of a winding up of the corporation<sup>3</sup>). In this class of cases there should of course be no distribution of any assets of the corporation<sup>4</sup>). But when the reduction of capital stock is for the purpose of reducing the actual capital to a lesser amount representing the needs of the corporate business, the amount of the whole assets in excess of the nominal capital as reduced must be distributed among the shareholders in proportion to their holdings<sup>5</sup>). This is, however, a distribution of assets rather than of income<sup>6</sup>). It may be distributed in kind<sup>7</sup>) or in cash<sup>8</sup>).

f) CHANGE OF THE PAR VALUE OF SHARES. — Many states require the articles to set forth not only the total amount of the corporate capital stock but also the number of shares into which it is divided, or, what amounts to the same thing, the par value of each share<sup>9</sup>). Some states fix the limits between which a par value may be selected<sup>10</sup>). The par value first adopted may prove too high or too low, and it is often desirable to change it and adopt a new one by the subdivision of inconveniently large shares or the consolidation of those inconveniently small. Where the change requires an alteration of a value fixed in the corporate articles<sup>11</sup>), legislative authority is required for its accomplishment<sup>12</sup>). But the shareholders of the corporation may effect the change either through the means provided for amending the charter<sup>13</sup>), the statutory provision concerning which usually expressly mentions changes of par as grounds for amendment, or in some states through special means without resort to the machinery required for amendment<sup>14</sup>).

g) ISSUE OF PREFERRED OR OTHER SPECIAL CLASSES OF SHARES. — Most states provide that if a corporation intends to have more than one class of shares, e. g. preferred and common, both must be described and stipulated for in the articles of association<sup>15</sup>). But if, after organizing, the corporation decides to issue preferred or other special classes of shares, many states grant it statutory permission to do so by a vote of its shareholders. Some statutes require the change to be made by an amendment to the articles<sup>16</sup>); some require a unanimous vote of the shareholders<sup>17</sup>); and some merely a majority vote<sup>18</sup>).

h) MISCELLANEOUS MATTERS REQUIRING THE ASSENT OF SHAREHOLDERS. — In some states the principal place of business of the corporation can

<sup>1</sup>) In re State Ins. Co., (1882) 14 Fed. 28; *Dane v. Young*, (1872) 61 Me. 160. — <sup>2</sup>) Cf. *Roberts v. Roberts-Wicks Co.*, (1900) 184 N. Y. 257. — <sup>3</sup>) *Roberts v. Roberts-Wicks Co.*, (1900) 184 N. Y. 257. — <sup>4</sup>) *Kassler v. Kyle*, (1901) 28 Colo. 248; cf. *Strong v. Brooklyn Cross-Town R. R. Co.*, (1883) 93 N. Y. 426. — <sup>5</sup>) *Jerome v. Cogswell*, (1907) 204 U. S. 1, affirming *Cogswell v. Second Natl. Bank*, (1905) 78 Conn. 75. — <sup>6</sup>) *Roberts v. Roberts-Wicks Co.*, supra. — <sup>7</sup>) *Harriman v. Northern Securities Co.*, (1905) 197 U. S. 244, 299; *Continental Securities Co. v. Northern Securities Co.*, (1904) 66 N. J. Eq. 274. — <sup>8</sup>) *Berger v. U. S. Steel Corporation*, (1902) 63 N. J. Eq. 809. — <sup>9</sup>) Vide supra, II, F, 7. — <sup>10</sup>) Conn. P. A. 1903, c. 194, sec. 63 (4) (minimum \$ 25); Ill. G. C. L., sec. 4 (\$ 10 to \$ 100); Mass. B. C. L., sec. 8 (minimum \$ 5); Mich. C. A., sec. 2 (5) (\$ 10 to \$ 100); Minn. R. L., sec. 2868 (\$ 1 to \$ 100); N. Y. B. C. L., sec. 2 (\$ 5 to \$ 100); Pa. L. 1889, p. 180 (maximum \$ 100). — <sup>11</sup>) Cf. *Somerset, etc., R. R. v. Cushing*, (1858) 45 Me. 524. — <sup>12</sup>) *Tschumi v. Hills*, (1897) 6 Kans. App. 549; *Salem Mill-dam Corporation v. Ropes*, (1827) 23 Mass. 23; cf. *New York,*

*New Haven, etc., R. R. v. Schuyler*, (1865) 34 N. Y. 30. — <sup>13</sup>) For Cal., Conn., Del., Ill., Mass., Mich., N. J., W. Va., Wis., and P. I., see VI, D, 4, b, 4, d, 1, note 2. — <sup>14</sup>) Me. R. S., c. 47, sec. 36; Minn. cf. R. L., secs. 2868 and 2871; N. Y. S. C. L., sec. 65; Pa. L. 1901, p. 606. — <sup>15</sup>) Cal. Civ. Code, sec. 290 (6), amended L. 1907; Conn. P. A. 1903, c. 194, sec. 63 (4); Del. G. C. L., secs. 5 (4), 13; Mass. B. C. L., sec. 8 (6); Mich. C. A., sec. 2 (4); Minn. R. L., sec. 2849 (5); N. J. C. A., sec. 7 (4); N. Y. B. C. L., sec. 2 (3); W. Va. Code, c. 54, sec. 6 (4); Wis. S., sec. 1759a, L. 1907, p. 415. — <sup>16</sup>) For Conn., Del., Mass., N. J., see VI, D, 4, 6, 4, d, 1, note 2; and also Conn. P. A. 1903, c. 194, secs. 73, 74; Del. G. C. L., sec. 13; Mass. B. C. L., sec. 27; N. J. C. A., sec. 18, as amended P. L. 1901, p. 245. — <sup>17</sup>) Wis. S., sec. 1759a, L. 1907, p. 415; and cf. *Higgins v. Lansingh*, (1895) 154 Ill. 301. — <sup>18</sup>) Me. R. S., c. 47, sec. 49; Mich. C. A., sec. 35 (three-fourths of shares); Minn. R. L., sec. 2878; N. Y. S. C. L., sec. 61 (two-thirds of shares); Pa. Act of 1874, secs. 16, 39 (1); W. Va. Code, c. 53, § 16, amended 1901 Acts, 35.



be changed by action of the directors<sup>1)</sup>, but in most such a change requires action by the shareholders. In some of these states it can be brought about only by an amendment to the charter<sup>2)</sup>, but in others a special form of action is provided<sup>3)</sup>.

In several states such important transactions as the sale of the property or franchises of a corporation<sup>4)</sup>, or the mortgaging of the property, or the issue of corporate bonds<sup>5)</sup>, are acts requiring the assenting vote of the shareholders.

c) The shareholders' meetings. — *1. Necessity.* — Normally shareholders exercise their control over the corporate affairs only in a corporate meeting. Even though a majority concur and evidence their agreement by writing, their action on corporate affairs, if taken as individuals, is not binding on the corporation<sup>6)</sup>. Since the corporate meeting is thus the seat of ultimate control of the corporation, statutory regulation as to its convening and conduct is full and precise.

*2. The Convening of the Meeting.* — **WHO MAY CALL IT.** — Ordinarily the time and place of holding the regular shareholders' meetings are provided for in the by-laws, and no further call is necessary<sup>7)</sup>. But other meetings may be called by the directors<sup>8)</sup> or sometimes by officers of the corporation<sup>9)</sup>. In case no dates for regular meetings are fixed in the corporate charter or by-laws, it seems probable that the directors have the power to call meetings<sup>10)</sup>. Since the shareholders' meeting has powers which enable it, in some measure at least, to control the directors, it may happen that directors are unwilling to call such meetings. To meet such a case, statutes frequently provide that a certain number of shareholders, or the shareholders holding a certain proportion of the corporate capital stock<sup>11)</sup>, can request the directors to call a meeting, and on their failure to do so can secure the calling of a meeting by a judicial officer<sup>12)</sup>. Even in the absence of such provision, a court of equity can compel the calling of a shareholders' meeting when it is necessary to protect the corporate interests<sup>13)</sup>. Moreover, if the directors refuse to call one of the appointed meetings they may be compelled to do so by mandamus<sup>14)</sup>.

*3. Place of Meeting.* — Statutes generally prohibit the holding of shareholders' meetings outside the state of incorporation, or provide that they shall be held within the state<sup>15)</sup>; and probably even in the absence of statute such meeting would not be valid<sup>16)</sup>, except as against the participants<sup>17)</sup>. Some states, however, give statutory permission to corporations to hold shareholders' meetings outside the state<sup>18)</sup>. Sta-

<sup>1)</sup> Del. G. C. L., sec. 137, as amended 1907; N. J. P. L. 1897, p. 175; cf. Conn. P. A. 1903, sec. 69, as amended by P. A. 1909, c. 160, and sec. 37, as amended by P. A. 1909, c. 160.  
<sup>2)</sup> — For Ill., Mass., Minn., W. Va., and Wis., see VI, 4, 6, 4, d, 1, note 2. — <sup>3)</sup> Cal. Civ. Code, sec. 321a; Me. R. S., c. 47, sec. 52; Mich. C. A., sec. 18; N. Y. S. C. L., sec. 13; Pa. L. 1893, p. 355. — <sup>4)</sup> Cal. Civ. Code, sec. 361a, and cf. sec. 309; Me. R. S., c. 47, secs. 56—67; Mass. B. C. L., secs. 40, 41, 44; N. Y. S. C. L., secs. 16, 17; Wis. S., sec. 1775. — <sup>5)</sup> Cal. Const., Art. XII, sec. 11; Civ. Code, sec. 359, L. 1907; Conn. cf. P. A. 1903, c. 194, sec. 40; N. J. P. L. 1902, p. 217; N. Y. S. C. L., secs. 6, 7; Pa. cf. L. 1901, p. 3, secs. 2, 3; L. 1905, p. 280; P. I. C. L., sec. 17, as amended May 17, 1909, Act No. 1895. — <sup>6)</sup> De la Vergne, etc., Co. v. German, etc., Inst., (1899) 175 U. S. 40; Duke v. Markham, (1890) 105 N. C. 131. But individual assents may estop those giving them from complaining of what they have sanctioned. Breslin v. Fries-Breslin Co., (1904) 70 N. J. L. 274; but cf. Watson v. Bonfils, (1902) 116 Fed. 157; Sellers v. Greer, (1898) 172 Ill. 549. — <sup>7)</sup> New York Electrical Workers, Union v. Sullivan, (1907) 107 N. Y. Supp. 886; Jones v. Hilldale Cemetery Society, (1901) 65 S. W. 838. — <sup>8)</sup> Cal. cf. Civ. Code, sec. 303 (1, 4, 8); Ill. Act of March 26, 1872, sec. 1—7; Mich. C. A., sec. 5; W. Va. Code, c. 53, sec. 41, amended 1901 Acts, 35. — <sup>9)</sup> Conn. P. A. 1903, c. 194, sec. 22; Minn. R. L., sec. 2875.

Bell v. Standard Quicksilver Co., (1905) 146 Cal. 699; and Stebbins v. Merritt, (1852) 10 Cush. 27. — <sup>10)</sup> Citizens, Mutual Fire Ins. Co. v. Sortwell, (1864) 90 Mass. 217. — <sup>11)</sup> Cal. Civ. Code, secs. 301, 310, 314; Conn. P. A. 1903, c. 194, secs. 24, 67; Ill. G. C. L., secs. 22, 50; Mass. B. C. L., sec. 22; Mich. C. A., sec. 5; N. J. C. A., sec. 46; N. Y. G. C. L., sec. 29; W. Va. Code, c. 53, sec. 41, amended 1901 Acts, 35; P. I. C. L., sec. 26. — <sup>12)</sup> Me. R. S., c. 47, secs. 12, 13; Mass. B. C. L., sec. 21. — <sup>13)</sup> Bartlett v. Gates, (1902) 118 Fed. 66; Lehigh Coal, etc., Co. v. Central R. R. Co., 35 N. J. Eq. 349. — <sup>14)</sup> Bassett v. Atwater, (1895) 65 Conn. 355; People v. Cummings, (1878) 72 N. Y. 433. — <sup>15)</sup> Cal. Civ. Code, sec. 319; Conn. P. A. 1903, c. 194, secs. 22, 67; La. R. S., sec. 741; Mass. B. C. L., sec. 20; Minn. R. L., sec. 2875; cf. Hodgson v. Duluth, etc., R. R., (1891) 46 Minn. 454; N. J. C. A., sec. 44; cf. P. L. 1900, p. 313; N. Y. G. C. L., sec. 30; cf. Ormsby v. Vermont Mining Co., (1874) 56 N. Y. 623; Tex. cf. R. S., Art. 655; P. I. C. L., sec. 24. — <sup>16)</sup> Harding v. American, etc., Co., (1899) 182 Ill. 551; Miller v. Ewer, (1847) 27 Me. 509; cf. Graham v. Boston, Hartford, etc., R. R., (1886) 118 U. S. 161. — <sup>17)</sup> Handley v. Stutz, (1891) 139 U. S. 417. — <sup>18)</sup> Del. cf. G. C. L., sec. 32; Mich. C. A., sec. 20; Pa. Act of 1874, sec. 38 (7); cf. L. 1893, p. 355, sec. 1; W. Va. Code, c. 54, sec. 23, amended 1901 Acts, 35.

tutes not infrequently provide that corporate meetings shall be held at the principal place of business of the corporation<sup>1</sup>). In the absence of such provision, or provision made in the by-laws, any reasonable place selected by the convenors would doubtless be upheld<sup>2</sup>).

4. *Time.* — It is customary to have times for holding the regular shareholders' meetings fixed in the by-laws, but some statutes prescribe times at which certain meetings, e. g. the ones for the election of directors, shall be held unless changed by by-laws<sup>3</sup>).

5. *Notice.* — It is essential to the validity of action at a shareholders' meeting that all shareholders should be given reasonable notice of its time, place, and purpose<sup>4</sup>). The charter or by-laws, however, usually provide such notice as to the regular shareholders' meetings, and if so, no further notice of these need be given<sup>5</sup>) unless a statute requires it<sup>6</sup>). But where the meeting is a special one, either as to time, place of meeting, or business to be transacted, proper notice as to all these points must be furnished to all entitled to participate<sup>7</sup>). Statutes and by-laws frequently make special provision as to the form or contents of this required notice and the manner of its communication<sup>8</sup>). Such prescriptions should be substantially complied with<sup>9</sup>). In their absence, however, no particular form of notice is necessary; but it must be precise in its information as to the time<sup>10</sup>) and place of the meeting<sup>11</sup>) and the nature of the business to be taken up<sup>12</sup>). It must be given a reasonable time beforehand<sup>13</sup>).

**WAIVER OF NOTICE, RATIFICATION OF IRREGULARLY CALLED MEETINGS, AND ESTOPPEL TO SET UP LACK OF NOTICE.** — The right of a shareholder to notice may be waived<sup>14</sup>), and if it is waived by all the shareholders a meeting, though called without proper notice, will be able to bind the corporation by its actions. Statutes frequently provide for such waiver, and prescribe the steps necessary to constitute it<sup>15</sup>). But if all the shareholders are present at a meeting it will generally be held to be valid even without their making a formal waiver<sup>16</sup>); and the same has been held when some members are present only by proxy<sup>17</sup>).

But if a meeting irregularly convened acts in the absence of some shareholders, and without securing a proper waiver, its acts are invalid<sup>18</sup>). These acts, however, may be ratified by a subsequent validly summoned meeting<sup>19</sup>). Persons who were present and took part may be estopped from disputing the validity of the

<sup>1</sup>) Cf. Cal., Minn., N. J., N. Y., and P. I. in VI. D. 4, c. 2, note 8. — <sup>2</sup>) Cf. Kessler & Co. v. Ensley Co., (1905) 141 Fed. 130; Commonwealth v. Smith, (1863) 45 Pa. St. 59. — <sup>3</sup>) Cal. Civ. Code, sec. 302, amended L. 1909, p. 48; Conn. P. A. 1903, c. 194, sec. 22; Mass. B. C. L., sec. 20; Pa. L. 1893, p. 355; L. 1891, p. 61, sec. 1; L. 1903, p. 50, sec. 1; Tex. cf. R. S., Art. 655. — <sup>4</sup>) Cf. Medical Society v. Weatherly, (1883) 75 Ala. 248; Wolfe v. Erwin & Wood Co., (1903) 75 S. W. 722. — <sup>5</sup>) See VI. D. 4, C. 2, note 7, VI. D. 4, b. 4, d. 2, g, note 15, and Hill v. Atlantic R. R., (1906) 143 N. C. 539. — <sup>6</sup>) Cal. cf. Civ. Code, sec. 303 (1, 4, 8); Conn. P. A. 1903, c. 194, sec. 22; Ill. G. C. L., sec. 3; Minn. R. L., sec. 2875; W. Va. Code, c. 53, sec. 41, amended 1901 Acts, 35; P. I. C. L., sec. 29. — <sup>7</sup>) Tuttle v. Michigan Ave. Line, (1877) 35 Mich. 247; cf. Dunster v. Bernards Land & Sand Co., (1906) 74 N. J. L. 132; Bagley v. Reno, etc., Co., (1902) 201 Pa. St. 78. But cf. Bell v. Standard Quicksilver Co., (1905) 146 Cal. 699. — <sup>8</sup>) Cal. Civ. Code, secs. 301, 310, 314, 320; Conn. P. A. 1903, c. 194, secs. 23, 24, 67, 68; Ill. G. C. L., secs. 14, 22, 51; Act of March 26, 1872, sec. 2; La. Act No. 149 of 1898; Mo. R. S., c. 47, sec. 12; Mass. B. C. L., sec. 22; Mich. C. A., secs. 3, 5; N. J. C. A., sec. 46; N. Y. G. C. L., sec. 43; Pa. cf. L. 1901, p. 3 (2); W. Va. Code, c. 53, sec. 41, amended 1901 Acts, 35; P. I. C. L., secs. 35, 32. — <sup>34</sup>

<sup>9</sup>) Westcott v. Minnesota Mining Co., (1871) 23 Mich. 145. — <sup>10</sup>) San Buenaventura Commercial, etc., Co. v. Vassault, (1875) 50 Cal. 534. — <sup>11</sup>) Cf. McDaniels v. Flower Brook Mfg. Co., (1850) 22 Vt. 274. — <sup>12</sup>) People's Ins. Co. v. Westcott, (1860) 80 Mass. 440; Bagley v. Reno, etc., Co., (1902) 201 Pa. St. 78. — <sup>13</sup>) Re Long Island R. R., (1837) 19 Wend. 37. — <sup>14</sup>) In re Hammond, (1905) 139 Fed. 898; Butler, etc., Co. v. Cleveland, (1906) 220 Ill. 128. — <sup>15</sup>) Cal. Civ. Code, secs. 302, 317, as amended by L. 1909, c. 58; Conn. P. A. 1903, c. 194, secs. 23, 68; Mo. R. S., c. 47, sec. 16; Mich. C. A., secs. 3, 5; N. J. C. A., sec. 16; P. I. 1902, p. 217; W. Va. Code, c. 53, sec. 41, amended 1901 Acts, 35; Wis. S., sec. 1761; P. I. C. L., sec. 24. — <sup>16</sup>) Handley v. Stutz, (1891) 139 U. S. 417; Gold Bluff Mining, etc., Corp. v. Whitlock, (1903) 75 Conn. 669. In re Griffling Iron Co., (1898) 63 N. J. L. 168, affirmed (1899) 63 N. J. L. 357; Burke v. Sidra Bay Co., (1902) 116 Wis. 137. — <sup>17</sup>) Columbia Natl. Bank v. Matthews, (1898) 85 Fed. 934; cf. In re Mathiason Mfg. Co., (1907) 122 Mo. App. 437. — <sup>18</sup>) Cleveland, etc., Co. v. Taylor Bros. Co., (1893) 54 Fed. 82; Jones v. Concord etc., R. Co., (1891) 67 N. H. 119, 234. — <sup>19</sup>) Richardson v. Vermont, etc., R. R. Co., (1872) 44 Vt. 613; cf. Hill v. Atlantic, etc., R. R., (1906) 143 N. C. 539.

acts of the meeting<sup>1</sup>), but creditors and absent or dissenting members are not prevented<sup>2</sup>).

6. *Quorum*. — To make acts of a shareholders' meeting valid, a quorum must have been present<sup>3</sup>). The by-laws usually fix the number of shareholders or shares of stock necessary to constitute a quorum. Sometimes statutes fix a quorum, and some of these stipulate that a majority of the stock must be present, at least unless by-laws provide otherwise<sup>4</sup>). In the absence of such requirement it is generally held that any number who attend a duly called meeting constitute a quorum<sup>5</sup>). This includes proxies<sup>6</sup>).

7. *Requisite Number of Assents*. — Provided a quorum is present, a majority of the votes actually cast is probably sufficient to validate action proposed and receiving such majority<sup>7</sup>). But this rule may be changed by by-law or statute, and it is usual for by-laws to require a majority vote of those present<sup>8</sup>), in ordinary business matters. In the case of fundamental or unusually important matters, such as amendments to the articles, the increase or reduction of the capital stock, etc., the statute generally fixes the proportion of the total votes necessary<sup>9</sup>).

8. *Conduct of the Shareholders' Meeting*. The conduct of the corporate meetings is usually regulated by by-laws, but in some matters, such as the supervision and control of elections, detailed statutory provisions are sometimes found<sup>10</sup>). If the meeting has been so conducted that the real intentions of the shareholders were registered, irregularities in the proceedings, so long as they did not affect substantial rights, will not invalidate the action of the meeting<sup>11</sup>). The presumption will be held by the courts that a meeting was regularly held and conducted, and the burden of proof is on one attacking its regularity<sup>12</sup>).

9. *Adjourned and Postponed Meetings*. — Adjournments are matters in the bona fide discretion of the meeting<sup>13</sup>), and in the absence of authority in the charter or by-laws a chairman cannot declare the meeting adjourned<sup>14</sup>). If the adjournment is not in good faith the adjourned meeting will have no power to bind the corporation<sup>15</sup>). If it is a proper adjournment, the subsequent meeting is a mere continuation of the original one<sup>16</sup>), and no notice of it need be given, in the absence of a requirement in statute or by-laws<sup>17</sup>). Such statutory requirement, however, is not infrequent<sup>18</sup>).

10. *Control of Shareholders' Meetings by the Courts*. — Courts, both of law and of equity, have power to compel the calling of shareholders' meetings<sup>19</sup>). A court of equity may enjoin the holding of a meeting where it would perpetrate a fraud upon

<sup>1</sup>) *Zabriskie v. Cleveland, Columbus, etc., R. R. Co.*, (1859) 23 How. 381; *Bucksport & Bangor R. Co. v. Buck*, (1878) 68 Me. 81; *Weinburg v. Union, etc., Advertising Co.*, (1897) 55 N. J. Eq. 640. — <sup>2</sup>) Cf. cases in note 18 on preceding page, and *Matter of Keller*, (1906) 101 N. Y. Supp. 133. — <sup>3</sup>) *Matter of Rapid Transit Ferry Co.*, (1897) 43 N. Y. Supp. 538; cf. *Castner v. Twitchell-Champlin Co.*, (1898) 91 Me. 524. — <sup>4</sup>) Cal. Civ. Code, sec. 312, L. 1907; sec. 321b; cf. *People v. Robinson*, (1883) 64 Cal. 373; *Mich. C. A.*, sec. 10; N. Y. cf. S. C. L., sec. 25, and *Matter of Rapid Transit Ferry Co.*, (1897) 44 N. Y. Supp. 539; Pa. Act of 1874, sec. 6; *W. Va. Code*, c. 53, sec. 42; *Wis. S.*, sec. 1749; *P. I. C. L.*, sec. 31. — <sup>5</sup>) *Eagle Iron Co. v. Colyar*, (1907) 156 Fed. 954; *Gilechrist v. Collopy*, (1904) 82 S. W. 1018 (Ky.); *Morrill v. Little Falls Mfg. Co.*, (1893) 53 Minn. 371. — <sup>6</sup>) *Franklin Trust Co. v. Rutherford Electric Co.*, (1898) 57 N. J. Eq. 42, affirmed 58 N. J. Eq. 584. — <sup>7</sup>) *State v. Chute*, (1885) 34 Minn. 135; *Columbia, etc., Levee Co. v. Meier*, (1866) 39 Mo. 53; contra *Commonwealth v. Wickersham*, (1870) 66 Pa. St. 134. — <sup>8</sup>) Cf. *Ellsworth, etc., Co. v. Faunce*, (1887) 79 Me. 440. — <sup>9</sup>) Vide supra, VI, D, 4, 6, 4. — <sup>10</sup>) Cal. Civ. Code, sec. 302, amended by L. 1909, c. 57; secs. 307, 308, 312; Conn.

*P. A.* 1903, c. 194, sec. 10; *Del. G. C. L.*, secs. 29, 30; *Minn. R. L.*, sec. 2858; *N. J. C. A.*, sec. 34, as amended *P. L.* 1902, p. 201; secs. 35, 40, 41, 42; *N. Y. S. C. L.*, sec. 31; *G. C. L.*, secs. 23, 27, 29—32; *Pa. cf. L.* 1901, p. 61, sec. 1; Act of 1874, sec. 8; *L.* 1876, p. 47, sec. 1; *P. I. C. L.*, sec. 31. — <sup>11</sup>) *Gorham v. Campbell*, (1852) 2 Cal. 135; *Fox v. Allensville, etc., Turnpike Co.*, (1874) 46 Ind. 31; *Downing v. Potts*, (1851) 23 N. J. L. 66; and cf. *Johnson v. Jones*, (1872) 23 N. J. Eq. 216; *State v. Pettineli*, (1875) 10 Nev. 141. — <sup>12</sup>) *Blanchard v. Dow*, (1851) 32 Me. 557; *Wells v. Rodgers*, (1886) 60 Mich. 525. — <sup>13</sup>) *Chicago Macaroni Mfg. Co. v. Boggiano*, (1903) 202 Ill. 312; *Penobscot & Kennebec R. Co. v. Dunn*, (1855) 39 Me. 587. — <sup>14</sup>) *Chicago Macaroni Mfg. Co. v. Boggiano*, supra; *State v. Cronan*, (1897) 23 Nev. 437; *Hardenburgh v. Farmers', etc., Bank*, (1834) 3 N. J. Eq. 68. — <sup>15</sup>) *State v. Bonnell*, (1878) 35 Ohio St. 10. — <sup>16</sup>) *Synnott v. Cumberland Building Loan Assn.*, (1902) 117 Fed. 379. — <sup>17</sup>) *In re Hammond*, (1905) 139 Fed. 898; *Smith v. Law*, (1860) 21 N. Y. 296; cf. *Wiggin v. Freewill, etc., Church*, (1844) 49 Mass. 301. — <sup>18</sup>) Vide VI, D, 4, C, 5, note 1. — <sup>19</sup>) Vide supra, VI, D, 4, C, 2; cf. *Del. G. C. L.*, sec. 31.

a minority<sup>1</sup>); or in lieu of this action it may appoint a master to conduct the meeting<sup>2</sup>). In a proper case — for example when the vote would aid in carrying out a scheme to create an illegal monopoly — equity will enjoin a registered shareholder from voting<sup>3</sup>), or compel him to execute a proxy to the person rightfully entitled to exercise the voting power<sup>4</sup>).

The acts of a shareholders' meeting may be set aside by the courts where illegal votes were received, and were necessary to carry the proposed measure or insure the election of the candidate declared elected<sup>5</sup>). In the absence of statute, the remedy in the case of illegal elections is by quo warranto<sup>6</sup>). But in some states statutes give courts of equity power to review corporate elections<sup>7</sup>).

d) Limitations on the Individual Shareholder's Right to Vote. — A shareholder is not so far a fiduciary of the corporation that he must not vote in his own interest if that is adverse to the interests of the corporation<sup>8</sup>). Proof that he has so voted and that a measure required this vote for its adoption will not invalidate the measure<sup>9</sup>). Even if the shareholder is also a director, his vote as shareholder may, it is held, be given to ratify a contract with the corporation, upon which contract his vote as director could not be counted because he is interested in it adversely to the corporation<sup>10</sup>).

The precise limits of the shareholder's power over his vote are not clearly fixed by the cases. In New York a statute provides that no shareholder shall cast his vote or issue a proxy for any sum of money or anything of value<sup>11</sup>), and contracts of this nature have been held unenforceable, even in the absence of a statute<sup>12</sup>).

5. THE SHAREHOLDER'S RIGHT TO DEAL AS AN INDIVIDUAL WITH HIS CORPORATION. — Since the shareholder as such occupies no fiduciary relation to the corporation, he is under no such duty in dealing with it as are the directors or promoters<sup>13</sup>). He may contract with it freely<sup>14</sup>), and is subject to no other rules as to disclosure and representations than a stranger to the corporation would be<sup>15</sup>). As creditor, he may take security for his debt to the exclusion of other creditors<sup>16</sup>).

6. THE POWERS OF THE MAJORITY OF SHAREHOLDERS. — a) In General. — *Control of Corporate Business.* — The majority of the shareholders have the right to control the action of the corporation in the carrying on of the corporate business, so long as the control is exercised in good faith and without fraud or oppression of the minority of the shareholders, and within the limits of the corporate powers as laid down by the charter<sup>17</sup>). A majority has no right to do any act outside the corporate powers, however beneficial to the corporation. These powers include, in the case of private business corporations, the power to discontinue the corporate enterprise whenever conditions are such that the business is actually financially

<sup>1</sup>) *Archer v. American W. W. Co.*, (1892) 50 N. J. Eq. 33. — <sup>2</sup>) *Bartlett v. Gates*, (1902) 118 Fed. 66; *Tunis v. Hestonville, etc.*, R. R. Co., (1892) 149 Pa. St. 70. — <sup>3</sup>) *Bigelow v. Calumet Mining Co.*, (1907) 155 Fed. 869; *Way v. American Grease Co.*, (1900) 60 N. J. Eq. 263; but cf. *Lucas v. Milliken*, (1905) 139 Fed. 816. — <sup>4</sup>) *American Natl. Bank v. Oriental Mills*, (1891) 17 R. I. 551; cf. *Pennsylvania R. R. Co. v. Pennsylvania Co. for Ins., etc.*, (1903) 205 Pa. St. 219. — <sup>5</sup>) The illegal votes must have been necessary to affect the election. *Kimball v. New England, etc., Co.*, (1899) 69 N. H. 485; *Re Argus Co.*, (1893) 138 N. Y. 557. — <sup>6</sup>) *People v. Albany, etc., R. R.*, (1874) 57 N. Y. 161; *Commonwealth v. Stevens*, (1895) 168 Pa. St. 582, cf. *New England, etc., Co. v. Phillips*, (1886) 141 Mass. 535, and *Cal. Civ. Code*, sec. 315. — <sup>7</sup>) *Cal. Civ. Code*, sec. 312, and cf. *Whitehead v. Sweet*, (1899) 126 Cal. 67; *N. J. C. A.*, sec. 42, and cf. *Kean v. Union Water Co.*, (1895) 52 N. J. Eq. 813; *N. Y. G. C. L.*, sec. 32, and cf. *Re Long Island R. Co.*, (1837) 19 Wend. 37, and *Re Argus Co.*, supra. — <sup>8</sup>) *Worth, etc., Co. v. Bingham*, (1902) 116

Fed. 785; *Windmuller v. Standard Distilling, etc., Co.*, (1902) 114 Fed. 491; *Shaw v. Davis*, (1894) 78 Md. 308; *Gamble v. Queen's County Water Co.*, (1890) 123 N. Y. 91. — <sup>9</sup>) *Windmuller v. Standard Distilling, etc., Co.*, (1905) 115 Fed. 748; *Middleton v. Arastraville Mining Co.*, (1905) 146 Cal. 219. — <sup>10</sup>) *Bjorngaard v. Goodhue County Bank*, (1892) 49 Minn. 483; *United States Steel Corp. v. Hodge*, (1903) 64 N. J. Eq. 807; contra, *Farmers' Loan, etc., Co. v. San Diego, etc., Co.*, (1891) 45 Fed. 518. — <sup>11</sup>) *N. Y. G. C. L.*, secs. 23, 27; *Penal L.*, sec. 668. — <sup>12</sup>) *Woodruff v. Wentworth*, (1882) 133 Mass. 309. — <sup>13</sup>) *Rothchild v. Memphis, etc., R. R.*, (1902) 113 Fed. 476. — <sup>14</sup>) *Bramblett v. Commonwealth Land, etc., Co.*, (1904) 83 S. W. 599 (Ky.); *Werle v. Northwestern Flint, etc., Co.*, (1905) 125 Wis. 534. — <sup>15</sup>) *Fox v. Mackay*, (1899) 125 Cal. 57. — <sup>16</sup>) *Reichwald v. Commercial Hotel Co.*, (1883) 106 Ill. 439; cf. *Moore v. Universal, etc., Co.*, (1899) 122 Mich. 48. — <sup>17</sup>) *North American Land & Timber Co. v. Watkins*, (1901) 109 Fed. 101; *Durfee v. Old Colony R. Co.*, (1862) 5 Allen 230; *Burden v. Burden*, (1899) 159 N. Y. 287.

embarrassed, or cannot longer be carried on with profit<sup>1</sup>). If the business can still be profitably pursued, in the absence of statutory or charter authority a majority cannot bind a dissenting minority<sup>2</sup>). And while the power to discontinue includes the power to dispose of the corporate assets for cash, the majority cannot dispose of them for other property—for example stock in a second corporation—without the consent of all the shareholders of the vendor corporation<sup>3</sup>). An attempt to do this may be enjoined by any dissenting shareholder<sup>4</sup>); or if it has been consummated it seems probable that the dissenting shareholder may have the act set aside<sup>5</sup>). Statutory authority, however, frequently permits sales of the corporate property under other circumstances upon the vote or consent of a specified number of shareholders less than the entire number<sup>6</sup>).

b) Amendments of the Corporate Charter. — Where, as is now usually the case, the general incorporation act grants the power to amend the corporate charter to some defined proportion of the shareholders, action properly taken under the statute will be binding on a dissenting minority<sup>7</sup>). But if, under its power to control the corporations it has created, the legislature tenders an amendment or an altered charter to a corporation for its acceptance<sup>8</sup>), there is a conflict among the decisions as to the power of a majority to accept the new charter and continue the corporate business under the newly prescribed conditions. It is generally agreed that if the amendment is adapted to the carrying out of the original purposes of the corporation, and does not radically alter its constitution, it may be accepted by a majority of the shareholders<sup>9</sup>) even against the dissent of a minority<sup>10</sup>). But if the change proposed is fundamental, even where the state has reserved to itself the right to alter, amend, or repeal, the state cannot force the corporation to continue operations under the new charter<sup>11</sup>), nor can a majority bind a dissenting minority to the change; a unanimous consent is necessary to the acceptance of the new charter. It is impossible to lay down any general rule drawn from the cases<sup>12</sup>) as to what changes will be regarded as fundamental.

c) Limitations on Power of Majority. — 1. *Statutory and Charter Restrictions.* — Statutes frequently, and also the articles of individual corporations, expressly limit the power of the majority, even in the management of the corporate business, where it is deemed advisable on account of the intrinsic importance of certain transactions to require more than a mere majority of assents to validate them. The most important classes of these transactions have already been discussed<sup>13</sup>).

2. *The Requirement of Good Faith in Transactions Authorized by the Majority.* — A majority cannot authorize a transaction which is a fraud upon the corporation, and a dissenting shareholder can have the transaction declared void on showing circumstances warranting an inference of fraud or unfairness<sup>14</sup>). But since the individual shareholder as such owes no duty to a corporation which will prevent him from voting in his own interest even when that interest is adverse to those of his corporation, and since his contracts with the corporation are no more open to attack on the ground of fraud because he is a shareholder than if he were a stranger to the corporation<sup>15</sup>), it is argued that the acts of a corporation controlled by a single shareholder who himself holds a majority of its shares, or by a group of shareholders who together hold such a majority, will not be set aside at the instance of a dissenting minority unless this minority can affirmatively show that the transactions are fraudulent<sup>16</sup>).

<sup>1</sup>) Sewell v. East Cape May Beach Co., (1893) 50 N. J. Eq. 717; Philipps v. Providence Steam Engine Co., (1899) 21 R. I. 302; and vide supra, III, C, 4. — <sup>2</sup>) Cf. Cook v. American Tubing, etc., Co., (1905) 65 Atl. 641 (R. I.); and III, C, 4. — <sup>3</sup>) Elyton Land Co. v. Dowdell, (1896) 113 Ala. 177; McLeod v. Lincoln Medical College, etc., (1904) 69 Nebr. 550. — <sup>4</sup>) Easum v. Buckeye Brewing Co., (1892) 51 Fed. 156. — <sup>5</sup>) Elyton Land Co. v. Dowdell, supra. — <sup>6</sup>) Vide supra, VI, D, 4, b, 4, d, h. — <sup>7</sup>) Vide supra, VI, D, 4, b, 4, d. — <sup>8</sup>) Vide infra, XIII, A and B. — <sup>9</sup>) Cf. Hope Ins. Co. v. Beckman, (1870) 47 Mo. 93. — <sup>10</sup>) Durfee v. Old Colony R. Co., (1862) 87 Mass. 230; Rutland, etc., R. R. v. Thrall, (1863) 35 Vt. 536; contra, Zabriskie v. Hackensack, etc., R. Co., (1867) 18 N. J.

Eq. 178; Mills v. Central R. Co., (1886) 41 N. J. Eq. 1. — <sup>11</sup>) Dow v. Northern R. Co., (1887) 67 N. H. 1; Stevens v. Rutland, etc., R. Co., (1851) 29 Vt. 545. — <sup>12</sup>) Ashton v. Burbank, (1873) 2 Dill. 435; Schwarzwaelder v. German Mutual Fire Ins. Co., (1899) 59 N. J. Eq. 589. — <sup>13</sup>) Vide supra, VI, D, 4. — <sup>14</sup>) Whiting Safety Catch Co. v. Western Scraper Co., (1905) 148 Fed. 396; Cook v. Anderson Food Co., (1905) 69 N. J. Eq. 660; Lillard v. Oil, Paint & Drug Co., (1903) 70 N. J. Eq. 197. — <sup>15</sup>) Vide supra, VI, D, 5. — <sup>16</sup>) Rothchild v. Memphis, etc., R. R. Co., (1902) 113 Fed. 476; Windmuller v. Standard Distilling Co., (1902) 114 Fed. 491; and cf. s. c., 115 Fed. 748; Cannon v. Brush Electric Co., (1903) 96 Md. 446; Wolf v. Pennsylvania R. Co., (1900) 195 Pa. St. 91.

On the other hand, many recent decisions hold that the control over the corporate affairs which control of a majority of shares makes possible imposes a correlative duty upon the possessors of the power. "They make themselves trustees and agents of the holders of the minority of the stock, because it is only through them that the latter may act or contract regarding the corporate property, or preserve or protect their interests in it<sup>1)</sup>". Hence it is held that the majority are so far fiduciaries of the minority that in initiating or authorizing action on behalf of the corporation they are in a position similar to that of directors; and any of these dealings in which they are interested as individuals are *prima facie* voidable and may be set aside at the instance of a dissenting minority, unless the majority assume successfully the burden of establishing their own good faith in the transaction<sup>2)</sup>.

**7. THE SHAREHOLDER'S RIGHT TO INVOKE JUDICIAL INTERVENTION IN THE AFFAIRS OF THE CORPORATION.** — a) *In General.* — A shareholder may seek judicial assistance either as an individual or on behalf of his corporation. As an individual he is not precluded by the fact of his membership in the corporation from bringing suit against it or its officers to enforce his individual rights, or to redress injuries he has suffered as an individual. Instances of this right have already been discussed<sup>3)</sup>. Ordinarily, however, he cannot appear where the injury he complains of or the right he seeks to enforce is primarily the affair of his corporation, and affects him only in common with the other shareholders<sup>4)</sup>. Thus a shareholder cannot maintain an action on a contract made by the corporation, or an injury to the corporate property, or because of mismanagement of the corporate affairs by the directors or officers in charge of them. The proper representatives of the corporate interests before the courts are the directors or officers of the corporation. In certain cases, however, for example where the wrong against the corporation of which complaint is made is one at which the managers of the corporation have connived, or of which they themselves are guilty, to leave the redress of the wrong to these managers would be equivalent to denying any remedy. Hence in a proper case the courts permit a shareholder to appear before them on behalf of the corporation.

b) *The Shareholder's Remedy for Injuries to the Corporation: Forum.* — A court of law will not recognize the standing of the shareholder as representative of the corporation. All actions on behalf of the corporation in a law court must be brought in the corporate name and by those authorized under the corporate charter or statute to sue on behalf of the corporation<sup>5)</sup>. But in equity where the shareholders cannot secure protection for the corporation, and thus indirectly for their interests as shareholders, through those regularly authorized to act on its behalf, they may appear themselves by what is called a shareholders' bill, and in a proper case obtain appropriate relief<sup>6)</sup>.

c) *Cases in which a Shareholders' Bill will be Allowed.* — 1. *In General.* — A proper case is presented for a shareholders' bill when the corporation is shown to be actually in the control of those who are responsible, by direct commission, or connivance, or negligence, for the wrong against the corporation. In general, a shareholder may maintain a bill in equity in his own name to enjoin a threatened *ultra vires* act of the directors or the majority of the shareholders, or even in some jurisdictions to set it aside if consummated; to enjoin or set aside a wrong about to be committed or already committed by the directors of the corporation, or by the majority of the shareholders, or by third parties against the corporation.

2. *Suits for Relief in the Case of Ultra Vires Acts.* — a) **TO ENJOIN A THREATENED ACT.** — Neither the directors nor the directors with the approval of the majority have a right to do any act outside of the powers granted to the corporation, and a shareholder can maintain a bill in his own name to prevent the commission of such an act<sup>7)</sup>. All

<sup>1)</sup> Jones v. Missouri-Edison Electric Co., (1905) 144 Fed. 765, 771. — <sup>2)</sup> Cf. Wheeler v. Abilene Natl. Bank, (1908) 519 Fed. 391; Booth v. Land Filling, etc., Co., (1905) 68 N. J. Eq. 536; Farmers, Loan, etc., Co. v. N. Y., etc., R. Co., (1896) 150 N. Y. 410; and cf. Glengarry Consolidated Mining Co. v. Boehmer, (1900) 28 Colo. 1. — <sup>3)</sup> Vide supra, VI, D, *passim*. — <sup>4)</sup> Cf. Smith v. Hurd, (1847) 53 Mass. 371; Converse v. United Shoe Machinery Co., (1904) 185 Mass. 422; Niles v. N. Y., etc., R. R. Co.,

(1902) 176 N. Y. 119. — <sup>5)</sup> Wells v. Dane, (1905) 100 Me. 67; Smith v. Hurd, (1847) 53 Mass. 371; Button v. Hoffman, (1884) 61 Wis. 20. — <sup>6)</sup> Dodge v. Woolsey, (1855) 18 How. 331; Hawes v. Oakland, (1881) 104 U. S. 450. — <sup>7)</sup> Dodge v. Woolsey, (1855) 18 How. 331; Pollock v. Farmers' Loan & Trust Co., (1895) 157 U. S. 429; Cherokee Iron Co. v. Jones, (1874) 52 Ga. 276; Carson v. Iowa City Gas Light Co., (1890) 80 Ia. 638; Theiss v. Durr, (1905) 125 Wis. 651.

that he needs to do to support his bill is to show that the act is about to be done<sup>1</sup>). It is not necessary to show wrongful intent on the part of the directors or the majority, or a danger of actual harm to the corporation. That the act would in fact be a benefit to the corporation is no defence if the act is ultra vires<sup>2</sup>). It is a violation of the dissenting shareholder's contract right to have the funds of the corporation invested in the enterprise for which it was chartered.

**b) TO SET ASIDE A CONSUMMATED ULTRA VIRES TRANSACTION.** — When the transaction has been fully consummated, so that the rights of others than the corporation have arisen, it has been held that the shareholder cannot maintain his bill<sup>3</sup>). Even where the contract has been fully performed only by the other party, it is questionable whether a shareholder in the corporation which has entered into the ultra vires contract should be allowed to have the transaction set aside<sup>4</sup>). In those jurisdictions, however, which do not recognize performance on one side of an ultra vires contract as binding the other party to perform in turn, an ultra vires contract may be undone at the suit of a shareholder<sup>5</sup>).

**3. Shareholders' Suits for Wrongs of Directors to the Corporation.** — **a) NECESSITY OF APPEAL TO THE CORPORATION.** — Fraud or negligence of directors in the conduct of the corporate business is a wrong against the corporation rather than against the shareholders individually<sup>6</sup>). Before a shareholder can bring suit on behalf of the corporation for such wrongs he must first appeal to the corporation to act for itself<sup>7</sup>). The corporation can control the directors through the shareholders' meeting. If the directors are appointed for a definite time, it seems that they cannot be removed even for cause<sup>8</sup>) unless the power to make the removal has been reserved in the articles or by-laws, as is frequently done, or is given by statute, as is the case in several states<sup>9</sup>). But in the states where the corporation has power to increase the number of directors, it may, by exercise of this power, reduce the wrongdoers to a minority of the board<sup>10</sup>). Moreover, it can institute legal proceedings against the directors to obtain appropriate relief, in damages or by an accounting or otherwise<sup>11</sup>). Whenever, therefore relief can be had through one of these forms of corporate action, the courts are not open to the individual shareholder.

**b) RIGHT TO A BILL WHERE CORPORATE ACTION CANNOT BE SECURED.** — It may be that the nature of the wrong complained of is such that action to check it must be immediate, and the delay incident to calling a shareholders' meeting would result in serious or irreparable injury to the corporation. In such a case the shareholder can file a bill for an injunction without prior appeal to the shareholders<sup>12</sup>). The same is true where there is no means provided by statute or the corporate regulations for calling a shareholders' meeting, or where the directors wrongfully refuse to exercise their power to call it<sup>13</sup>). Moreover, if it is obvious that the wrongdoers are in control of the corporation, either through actual ownership of a majority of the shares or through acquiescence in their wrong-doing by a majority of the other shareholders, the complaining shareholder will not be compelled to make an appeal which will necessarily be futile<sup>14</sup>). He may maintain his bill at once, and is entitled to any ap-

<sup>1</sup>) Cf. *Hutton v. Bancroft & Sons Co.*, (1897) 83 Fed. 17. — <sup>2</sup>) *Byrne v. Schuyler Electric Mfg. Co.*, (1895) 65 Conn. 336. — <sup>3</sup>) *Hodges v. New England Screw Co.*, (1850) 1 R. I. 312; and cf. *Bear Valley, etc., Co. v. Savings, etc., Co.*, (1902) 117 Fed. 941. — <sup>4</sup>) Cf. *Rogers v. Nashville, etc., Ry.*, (1898) 91 Fed. 299; *Miner's Ditch, etc., Co. v. Zellerbach*, (1869) 37 Cal. 543; *Terry v. Eagle Lock Co.*, (1879) 47 Conn. 141; *Buford v. Keokuk, etc., Packet Co.*, (1879) 69 Mo. 611. — <sup>5</sup>) *Morris v. Elyton Land Co.*, (1900) 125 Ala. 263; and *C. III, D. I.* — <sup>6</sup>) Cf. *Lawrence v. Curtis*, (1906) 191 Mass. 240; *Niles v. New York Central, etc., R. R. Co.*, (1902) 176 N. Y. 119; *Lindemann v. Rusk*, (1905) 125 Wis. 210. — <sup>7</sup>) *Bill v. Western Union, etc., Co.*, (1883) 16 Fed. 14; *Kavanaugh v. Commonwealth Trust Co.*, (1905) 181 N. Y. 121. — <sup>8</sup>) *Powers v. Blue Grass Bldg., etc., Assn.*, (1898) 86 Fed. 705; *Johnson v. Jones*, (1872) 23 N. J.

Eq. 216; *Robertson v. Bullions*, (1854) 11 N. Y. 243; and cf. *Fawcett v. Charles*, (1835) 13 Wend. 473. — <sup>9</sup>) *Vide V. C. 5*, and cf. *Shulman v. Star, etc., Co.*, (1906) 99 N. Y. Supp. 419; *State v. Horan*, (1900) 22 Wash. 197. — <sup>10</sup>) *Vide V. C. 7, A, 3*. — <sup>11</sup>) *American Spirits Mfg. Co. v. Easton*, (1903) 120 Fed. 440; *Donovan v. Purtell*, (1905) 216 Ill. 629; *Marlborough Assn. v. Peters*, (1901) 179 Mass. 61; *Bosworth v. Allen*, (1901) 168 N. Y. 157; *Rushbrook Coal Co. v. Jenkins*, (1906) 214 Pa. 517. — <sup>12</sup>) *Schoening v. Schwenk*, (1901) 112 Ia. 733. — <sup>13</sup>) *Pond v. Vermont Valley R. Co.*, (1874) 12 Blatchf. 280; *Lohigh Coal, etc., Co. v. Central R. R. Co.*, (1892) 35 N. J. Eq. 379. — <sup>14</sup>) *Metcalf v. American School, etc., Co.*, (1901) 108 Fed. 909; *Weir v. Bay State Gas Co.*, (1898) 91 Fed. 940; *Smith v. Dorn*, (1892) 96 Cal. 73; *Donald v. American Smelting, etc., Co.*, (1901) 62 N. J. Eq. 729.

propriate relief by either injunction, a setting aside the transaction, an accounting, or any other remedy within the power of the court to grant<sup>1</sup>).

**4. Suits against Wrongs by a Majority of the Shareholders.** — a) **NECESSITY OF PRELIMINARY APPEAL TO THE CORPORATION.** — Where the majority of the shareholders are themselves guilty of a wrong against the corporation<sup>2</sup>), and are still in control of the corporation<sup>3</sup>), it will, of course, be useless to call a corporate meeting to take action for the corporate interest. It is held by some courts that an appeal to the directors to sue on behalf of the corporation is, however, necessary, or else a showing that the directors are connected with the majority of the shareholders in the wrong<sup>4</sup>). Other courts hold this unnecessary, on the ground that the directors are in any case subject to the control of the majority<sup>5</sup>).

b) **RIGHT TO SUE WHERE CORPORATE ACTION CANNOT BE SECURED.** — Since it is clear that when the control of the corporation is in the hands of the wrongdoers, the corporation will be without a remedy unless the shareholder can sue on its behalf, the courts of equity will allow him to maintain his bill in his own name and on behalf of other shareholders not participating in the fraud or other wrong, and appropriate relief will be granted, either by a setting aside of an executed wrongful transaction, an injunction against one threatened, or other remedies within the power of the court<sup>6</sup>).

**5. Wrongs against the Corporation by Third Parties.** — Where a wrong has been committed by a third party against the corporation, it is obvious that the right of action lies in the corporation, and a shareholder must appeal to it to act. He should first appeal to the directors, and if they refuse then to the shareholders, unless he can show that such an appeal would be futile. The directors or the shareholders may in entire good faith, and with regard to the best interests of the corporation, refuse to bring such a suit, e. g. if the cost of suing would clearly outweigh the amount recoverable; and in such a case the shareholder should not be allowed to sue<sup>7</sup>). It is immaterial that the refusal is a mistaken one, so long as it is in good faith<sup>8</sup>). If the refusal, however, is not *bonâ fide*, but prompted by reasons other than regard for the interests of the corporation, the action of the directors or the majority in refusing to sue becomes itself a wrong to the corporation, and gives the shareholder a right to file his bill<sup>9</sup>).

**6. Defence by the Shareholder on behalf of the Corporation in a Suit brought against the Corporation by a Third Party.** — The directors of the corporation are its proper representatives in dealing with suits brought against it<sup>10</sup>). They have the right to exercise an honest discretion in the matter of defending such a suit. A shareholder cannot appear on behalf of his corporation in the suit unless he can show that the regular representatives of the corporation either will not defend at all or will not defend with proper diligence, and that their refusal is not based on an honest exercise of their judgment on behalf of the corporation<sup>11</sup>). But if the directors' and majority's refusal to act is a breach of their duty of good faith to the minority<sup>12</sup>), or if there is in

<sup>1</sup>) *Donald v. Mfrs.' Export Co.*, (1905) 142 Ala. 578; *Gunderson v. Illinois Trust, etc.*, Bank, (1902) 199 Ill. 422; *Barry v. Moeller*, (1904) 68 N. J. Eq. 483; but cf. *Godfrey v. McConnell*, (1906) 151 Fed. 783. — <sup>2</sup>) See VI. D. 6, c, and *Lucas v. Milliken*, (1905) 139 Fed. 816; *Louisville Bridge Co. v. Dodd*, (1905) 85 S. W. 683 (Ky.); *Parsons v. Tacoma Smelting Co.*, (1901) 25 Wash. 492. — <sup>3</sup>) Cf. *Kessler v. Ensley Co.*, (1903) 123 Fed. 546; *Flynn v. Brooklyn City R. R. Co.*, (1896) 158 N. Y. 493. — <sup>4</sup>) *Squair v. Lookout Mountain Co.*, (1890) 42 Fed. 729; *Mack v. De Bardeleben, etc., Co.*, (1890) 90 Ala. 396; *Dunphy v. Traveller Newspaper Co.*, (1888) 146 Mass. 495; *Wolf v. Pennsylvania R. R. Co.*, (1900) 195 Pa. St. 91. — <sup>5</sup>) *Harrison v. Thomas*, (1901) 112 Fed. 22; *Montgomery Traction Co. v. Harmon*, (1904) 140 Ala. 505. — <sup>6</sup>) *Rogers v. Nashville, etc., Ry.*, (1898) 91 Fed. 299; *Heall v. Hill*, (1869) 16 Cal. 145; *Davis v. U. S. Electric Co.*, (1893) 77 Md. 35; *Sage v. Culver*, (1895) 147 N. Y. 241; *Parsons v. Tacoma Smelting Co.*, (1901) 25 Wash. 492. See also

VII. A. 4. — <sup>7</sup>) *Kessler v. Ensley Co.*, (1903) 123 Fed. 546; *Dunphy v. Traveller Newspaper Co.*, (1888) 146 Mass. 495; *McCloskey v. Snowden*, (1905) 212 Pa. 249. But cf. *Perkins v. Northern Pacific R.*, (1907) 155 Fed. 445. — <sup>8</sup>) *Dickerman v. Northern Trust Co.*, (1900) 176 U. S. 181; cf. *Dudley v. Kentucky High School*, (1873) 9 Bush. 576 (Ky.). — <sup>9</sup>) *Kessler & Co. v. Ensley Co.*, (1904) 129 Fed. 397; cf. *Groel v. United Electric Co.*, (1905) 70 N. J. Eq. 616; and vide supra, VI. D. 7, c, 3, and 4. — <sup>10</sup>) *Pneumatic Gas Co. v. Berry*, (1885) 113 U. S. 322; *Donahue v. Mariposa, etc., Co.*, (1885) 66 Cal. 317; *Taylor v. Sutherland Co.*, (1908) 60 S. E. 132 (Va.). — <sup>11</sup>) *Ainsworth v. Evans*, (1905) 80 Pac. 344 (Ariz.); *Home, etc., Co. v. McKibben*, (1899) 60 Kans. 387; *Meyer v. Bristol, etc., Co.*, (1901) 163 Mo. 59. — <sup>12</sup>) *Koehler v. Black River Falls Iron Co.*, (1862) 2 Black 715 (U. S.); *Guarantee, etc., Co. v. Duluth, etc., R. R.*, (1895) 70 Fed. 803; *Farmers' Loan, etc., Co. v. New York, etc., Ry.*, (1896) 150 N. Y. 410; *Kanawha, etc., Co. v. Ballard*, (1897) 43 W. Va. 721.



fact no board of directors to act for the corporation<sup>1</sup>), a minority shareholder, upon showing that his corporation cannot obtain relief through action by its regular representatives, may obtain it by a bill in equity<sup>2</sup>); or if the suit is already in equity he may intervene and set up any defence which the corporation might set up<sup>3</sup>).

d) Who is Entitled to Bring a Shareholder's Bill. — *1. In General.* — The power to appear by a shareholder's bill in place of the regular representatives of the corporation is granted to shareholders only<sup>4</sup>), and not to others interested in protecting the corporation from wrongs done or threatened against it. The applicant must be a shareholder at the time of filing his bill<sup>5</sup>), though he does not have to be registered<sup>6</sup>) or fully paid up<sup>7</sup>). So long as the plaintiff is a real shareholder he has a right in a proper case to bring a shareholder's bill, and this right is unaffected by the relative size of his holdings<sup>8</sup>), or by the motive with which he brings suit, even though it is demonstrable that he is not suing with an eye to the best interests of the corporation<sup>9</sup>). But he must be a real plaintiff, and not acting merely as the stalking-horse of some one who is not a shareholder<sup>10</sup>); and so the size of his holdings or the motive prompting his suit may be considered as throwing light on the question of the reality of his interest<sup>11</sup>).

*2. Disqualifications Barring a Shareholder.* — a) **ESTOPPEL.** — If the shareholder who brings a bill has participated in, assented to, or acquiesced in the act complained of, he cannot maintain his suit<sup>12</sup>). His assent may consist in ratification, either express<sup>13</sup>) or by intentional acceptance of benefits accruing from the act<sup>14</sup>). If the shareholder, though not himself thus implicated in the original wrong, has failed to act promptly upon learning of it<sup>15</sup>), or, being in possession of facts which should have put him upon an inquiry, has not promptly availed himself of accessible means of obtaining knowledge of the wrong<sup>16</sup>), he will by this laches be barred from his suit. But delay in seeking a remedy is not laches until either knowledge or the means of knowledge and inquiry existed<sup>17</sup>).

b) **RIGHT OF A SHAREHOLDER WHO BECAME SUCH SUBSEQUENT TO THE ACT COMPLAINED OF.** — *1. In General.* — If a shareholder who has purchased his shares after the consummation of the act he complains of brings a shareholder's bill, the questions of how he acquired his shares and in what court he is seeking his bill both become material. The mere fact, however, that he acquired his shares after the transaction<sup>18</sup>), or even did so in order to bring the suit<sup>19</sup>), is not in itself a bar. But

<sup>1</sup>) *Frederick Milling Co. v. Frederick, etc.*, Co., (1906) 106 N. W. 298 (S. Dak.); *Doak v. Stahlman*, (1899) 58 S. W. 741 (Tenn.). — <sup>2</sup>) *Land, Log, & Lumber Co. v. McIntyre*, (1898) 100 Wis. 245. — <sup>3</sup>) *Big Creek Iron Co. v. American L. & T. Co.*, (1904) 127 Fed. 625. — <sup>4</sup>) *Cf. Railroad Co. v. Ellerman*, (1881) 105 U. S. 166; *Hollins v. Brierfield Coal, etc., Co.*, (1893) 150 U. S. 371, 385. A shareholder in a corporation which itself owns shares in a second corporation may file a bill to prevent an ultra vires act of the latter. *Carter v. Producers', etc., Co.*, (1894) 164 Pa. St. 463; and *cf. Savre v. United, etc., Co.*, 156 Fed. 79. — <sup>5</sup>) *MacVeagh v. Denver City Waterworks Co.*, (1901) 107 Fed. 17; *Hanna v. Lyon*, (1904) 179 N. Y. 107. — <sup>6</sup>) *Parrot v. Byers*, (1871) 40 Cal. 614; *Carson v. Iowa City Gas Light Co.*, (1890) 80 Ia. 638; *O'Connor v. International, etc., Co.*, (1905) 68 N. J. Eq. 680. — <sup>7</sup>) *Landes v. Globe, etc., Co.*, (1884) 73 Ga. 176; and *cf. Baker v. Leighton, etc., Assn.*, (1900) 164 N. Y. 557; *cf. also Le Warne v. Meyer*, (1889) 13 Colo. 587, *Arkansas, etc., Co. v. Farmers', etc., Co.*, (1899) 13 Colo. 587, and *Arnold v. Searing*, (1907) 67 Atl. 831. — <sup>8</sup>) *Teller v. Tonopah, etc., R. R.*, (1907) 155 Fed. 482; *Montgomery Traction Co. v. Harmon*, (1904) 140 Ala. 505; but *cf. McHenry v. New York, etc., R. R. Co.*, (1881) 22 Fed. 130. — <sup>9</sup>) *Carson v. Iowa City Gas Light Co.*, (1890) 80 Ia. 638; *Central R. R. Co. v. Collins*, (1874) 40 Ga. 582. — <sup>10</sup>) *Watson*

*v. Le Grand, etc., Co.*, (1898) 177 Ill. 203; *Be-shoar v. Chappell*, (1895) 6 Colo. App. 323; *Breeze v. Lone Pine-Surprise, etc., Co.*, (1905) 39 Wash. 602. — <sup>11</sup>) *Danmeyer v. Coleman*, (1882) 11 Fed. 97; *Trimble v. American, etc., Co.*, (1901) 61 N. J. Eq. 340. — <sup>12</sup>) *Synnott v. Cumberland Building Loan Assn.*, (1902) 117 Fed. 379; *Leigh v. National Hollow Brake Beam Co.*, (1906) 224 Ill. 76. — <sup>13</sup>) *Allen v. Wilson*, (1886) 28 Fed. 677; *Burden v. Burden*, (1899) 159 N. Y. 287, 304. — <sup>14</sup>) *Traer v. Lucas Prospecting Co.*, (1904) 124 Ia. 107; *Wormser v. Metropolitan St. Ry.*, (1906) 184 N. Y. 83; *Jutte v. Hutchinson*, (1899) 189 Pa. St. 218. — <sup>15</sup>) *Dimpfel v. Ohio & M. Ry.*, (1884) 110 U. S. 209; *Kessler & Co. v. Ensley Co.*, (1905) 141 Fed. 130, affirmed 148 Fed. 1019; *Cole v. Birmingham, etc., Co.*, (1905) 143 Ala. 427. — <sup>16</sup>) *Leavenworth County v. Chicago, etc., R. R.*, (1883) 13 Fed. 152; *Kelly v. Newburyport, etc., R. R.*, (1886) 141 Mass. 496. — <sup>17</sup>) *Brinckerhoff v. Roosevelt*, (1906) 143 Fed. 478; *Edwards v. Mercantile Co.*, (1903) 124 Fed. 381; *cf. Kessler v. Ensley Co.*, (1904) 129 Fed. 397; *Von Arnim v. American Tube Works*, (1905) 188 Mass. 515. — <sup>18</sup>) *Parsons v. Joseph*, (1891) 92 Ala. 403; *Winsor v. Bailey*, (1875) 55 N. H. 218; but *cf. Alexander v. Searey*, (1888) 81 Ga. 536; *Home Fire Ins. Co. v. Barber*, (1903) 67 Nebr. 644; *Rankin v. Southwestern, etc., Co.*, (1903) 12 N. M. 54. — <sup>19</sup>) *Carson v. Iowa City Gas Light Co.*, (1890) 80 Ia. 638.

if the shareholder has purchased his shares from one who has participated in the wrong on account of which he seeks his bill, he will be barred by that fact<sup>1</sup>). Some courts, however, hold that he will not be thus barred unless he took with knowledge of his transferor's estoppel<sup>2</sup>). He is not in any case barred from suing to prevent continuance of a course of wrongdoing in which his transferor had acquiesced<sup>3</sup>).

2. *In the Federal Courts.* — The Supreme Court of the United States, under its power to make rules of practice for Federal courts, has established as a rule for these courts that every shareholder's bill must contain an allegation that "the plaintiff was a shareholder at the time of the action of which he complained or that his share had devolved upon him since by operation of law<sup>4</sup>)". This allegation must be proved<sup>5</sup>), and the rule applies wherever a shareholder is seeking to enforce rights on behalf of the corporation<sup>6</sup>) in a Federal court. It has been held also to apply to cases removed from state courts to a Federal court<sup>7</sup>). A failure to make or substantiate the allegation causes a dismissal on the ground that the petition does not state facts sufficient to constitute a cause of action<sup>8</sup>). Some state courts have held that this rule is not a mere rule of practice but the enunciation of a general rule of law, and in consequence follow it in cases brought before them<sup>9</sup>); but the weight of state authority is contra<sup>10</sup>).

e) *Parties to Suits by Shareholders.* — 1. *Parties Plaintiff.* — If a shareholder's bill is to prevent the commission or continuance of an ultra vires act, the shareholder may, if he choose, sue on his own behalf alone, as the act complained of is a wrong not only to the corporation but to him individually<sup>11</sup>). But where his suit is only as a representative of the corporation, he must bring his bill on behalf of himself and all such other shareholders as are not made defendants, or on behalf of himself and all others who are similarly situated and choose to come in<sup>12</sup>). Several shareholders may join in a bill as original petitioners<sup>13</sup>); or when the bill is filed by one the others may come in by petition if qualified themselves to have brought the bill in the first instance<sup>14</sup>). In either of these cases, should one petitioner prove to be or become disqualified the bill may still be obtained by any remaining petitioner possessing the necessary qualifications<sup>15</sup>).

2. *Parties Defendant.* — The corporation must always be made a party defendant, as the suit is in its behalf, and it should be concluded by the decree rendered<sup>16</sup>). If the suit is based on the wrongful acts of shareholders or directors they, or someone representative of them, should be made defendants on order to give them an opportunity to put in a defence<sup>17</sup>). If, however, no relief is sought against shareholders or directors, as in an action to set aside a transfer by the corporation to third parties, made by directors, these latter need not be made parties<sup>18</sup>). If the suit is based on a right of the corporation against a stranger, he should be made a party to give him an opportunity to defend<sup>19</sup>).

f) *The Result of a Judgment or Decree.* — A decision on the merits<sup>20</sup>) in a shareholder's suit is binding upon the corporation, and through it upon all shareholders,

1) *Symmes v. Union Trust Co.*, (1894) 60 Fed. 830; *Clark v. American Coal Co.*, (1892) 86 Ia. 436; *Trime v. American, etc., Co.*, (1901) 61 N. J. Eqbl. 340. — 2) *Parsons v. Joseph*, (1891) 92 Ala. 403. — 3) *McC Campbell v. Fountain Head R. Co.*, (1903) 77 S. W. 1070. — 4) *Rule 94*, (1881) 104 U. S. IX; cf. *Hawes v. Oakland*, (1881) 104 U. S. 450. — 5) *Dimpfel v. Ohio, etc., Ry. Co.*, (1884) 110 U. S. 209. — 6) Cf. *Bareus v. Gates*, (1898) 89 Fed. 783; and cf. *Briggs v. Traders' Co.*, (1906) 145 Fed. 254. — 7) *Vonner v. Great Northern Ry.*, (1908) 209 U. S. 24, affirming s. c., (1907) 153 Fed. 108. — 8) *Ibid.* — 9) *Miller v. Murray*, (1892) 17 Colo. 408; *Alexander v. Searcy*, (1888) 81 Ga. 536; *Home Fire Ins. Co. v. Barber*, (1903) 67 Nebr. 644 (dictum). — 10) See cases in note 2, supra, and *Forrester v. Boston, etc., Mining Co.*, (1899) 21 Mont. 544. — 11) *March v. Eastern Ry. Co.*, (1860) 43 N. H. 515; cf. *Zabriskie v. Cleveland, etc., R. R. Co.*, (1859) 23 How. 381. — 12) *Edwards v. Bay State Gas*

*Co.*, (1904) 130 Fed. 242; *Wickersham v. Crittenden*, (1892) 93 Cal. 17; *Bethune v. Wells*, (1894) 94 Ga. 486; *Winsor v. Bailey*, (1875) 55 N. H. 218. — 13) *Marie v. Garrison*, (1880) 83 N. Y. 14. — 14) *Coltrane v. Templeton*, (1901) 106 Fed. 370; cf. *Standard, etc., Co. v. Jones*, (1901) 64 Ohio St. 147. — 15) *Hanna v. Lyon*, (1904) 179 N. Y. 107; cf. *Belmont, etc., Co. v. Columbia, etc., Co.*, (1891) 46 Fed. 336. — 16) *Davenport v. Dows*, (1873) 18 Wall. 626; cf. *Willoughby v. Chicago, etc., Co.*, (1892) 50 N. J. Eq. 656. — 17) *Kibon v. Chicago, R. I., etc., R. Co.*, (1872) 16 Wall. 446; cf. *Berwind v. Van Horne*, (1900) 104 Fed. 581; *Westcott v. Minnesota Mining Co.*, (1871) 23 Mich. 145. — 18) *Geer v. Mathieson, etc., Works*, (1903) 190 U. S. 428; *Politz v. Wabash R. R.*, (1907) 153 Fed. 941; *Woodroof v. Howes*, (1891) 88 Cal. 184. — 19) *Weidenfeld v. Northern Pacific Ry. Co.*, (1904) 129 Fed. 305. — 20) Cf. *Eagle Iron Co. v. Colyar*, (1907) 156 Fed. 954; cf. *The Telegraph v. Lee*, (1904) 125 Ia. 17.

whether plaintiffs or defendants, whether they have joined with the plaintiff or been joined as defendants or not<sup>1)</sup>, and even if they have been prosecuting a similar suit themselves<sup>2)</sup>. If the relief obtained is the recovery of money or property, the proceeds go to the corporation and not to the shareholder who brought the suit on its behalf<sup>3)</sup>. He is not entitled even to separate damages for depreciation in the value of his shares<sup>4)</sup>. But if he has recovered money or other thing of value for the corporation, he is entitled to a reasonable allowance for his costs and outlay, including reasonable attorney's fees<sup>5)</sup>. If, however, nothing of value is actually received by the corporation, even though a wrongful disbursement is prevented, it has been held that the petitioners get no reimbursement from the corporation<sup>6)</sup>; and if the suit is unsuccessful this will, of course, be true<sup>7)</sup>.

**8. RIGHT TO DIVIDENDS.** — a) In General. — The shareholders participate in the profits of the corporate enterprise through the distribution to them of dividends. A dividend has been defined by the United States Supreme Court as "that portion of its profits which the corporation by its directors sets apart for rateable division among its shareholders<sup>8)</sup>". As the definition suggests, the profits, like any other assets of the corporation, belong to the corporation itself and not to the shareholders<sup>9)</sup>. No matter how large the accumulation of profits no action can be maintained by a shareholder against the corporation for any part of this surplus until a dividend is declared<sup>10)</sup>.

b) The Declaration of Dividends: Power and Duty of Directors. — The distribution reduces the assets of the corporation available for the prosecution of its business. Hence the amount to be distributed and the time at which distribution shall be made is, in the absence of statutory limitation, left to the discretion of the directors of the corporation<sup>11)</sup>. If the directors have in good faith decided not to make such distribution at a given time, the shareholders cannot successfully invoke judicial interference with the discretion exercised<sup>12)</sup>. The directors may re-invest profits in the extension of the corporate business<sup>13)</sup>, or allow them to accumulate in a larger surplus<sup>14)</sup>. If, however, the directors do not act in good faith, and withhold a dividend for purposes other than the interests of the corporation, a court of equity will at the instance of any shareholder compel the declaration and payment of a dividend<sup>15)</sup>. Moreover, statutes in some states require the directors to distribute yearly some part or even all of the profit earned during the year<sup>16)</sup>, or in other ways limit the discretion of the directors in the declaration of dividends<sup>17)</sup>. Most of these statutes, however, expressly permit the articles or by-laws to provide otherwise<sup>18)</sup>.

c) Sources of Dividends. — Dividends in the strict sense should be paid from net profits only. Upon an authorized reduction of capital stock a distribution of capital

1) Willoughby v. Chicago Junction, etc., Co., (1892) 50 N. J. Eq. 656; cf. Buck v. Massie, (1901) 109 La. 776. — 2) Hearst v. Putnam Mining Co., (1904) 28 Utah 184. — 3) Howe v. Barney, (1891) 45 Fed. 668; Chetwood v. California Natl. Bank, (1896) 113 Cal. 649; Chicago Macaroni, etc., Co. v. Boggiano, (1903) 202 Ill. 312; Landis v. Sea Isle, etc., Co., (1896) 53 N. J. Eq. 654 and cf. Brewster v. Hatch, (1890) 122 N. Y. 349. — 4) Cf. Wells v. Dane, (1905) 101 Me. 67; Loewenstein v. Diamond, etc., Co., (1904) 88 N. Y. Supp. 313. — 5) Central R. R. v. Pettus, (1885) 113 U. S. 116; McCourt v. Singers-Bigger, (1906) 145 Fed. 103; Chetwood v. California Natl. Bank, supra; Louisville Bridge Co. v. Dodd, (1905) 85 S. W. 683; and cf. Lillard v. Oil, etc., Co., (1904) 70 N. J. Eq. 197. — 6) Alexander v. Atlanta, etc., R. R., (1901) 113 Ga. 193; but cf. Forrester v. Boston, etc., Co., (1904) 74 Pac. 1088. — 7) Hobbs v. McLean, (1886) 117 U. S. 567; Barr v. Pittsburgh Plate Glass Co., (1893) 57 Fed. 86; and cf. Edwards v. Bay State, etc., Co., (1904) 130 Fed. 242. — 8) Mobile, etc., R. R. v. Tennessee, (1894) 153 U. S. 486, 496; cf. In re Haas Co., (1904) 131 Fed. 232. — 9) Robertson v. Brulatour, (1907) 188 N. Y.

301. — 10) Cf. Knapp v. S. Jarvis Adams Co., (1905) 135 Fed. 1008; Harris v. San Francisco Sugar Refining Co., (1871) 41 Cal. 393; Beveridge v. N. Y., etc., R. R., (1889) 112 N. Y. 1. — 11) Schell v. Alston Mfg. Co., (1906) 149 Fed. 439; Knapp v. S. Jarvis Adams Co., supra; Zellerbach v. Allenberg, (1893) 99 Cal. 57; Stevens v. U. S. Steel Corporation, (1905) 68 N. J. Eq. 373. — 12) New York, etc., R. R. v. Nickals, (1886) 119 U. S. 296, reversing s. c. 15 Fed. 575; Burden v. Burden, (1899) 159 N. Y. 287. — 13) Pratt v. Pratt, (1866) 33 Conn. 446; Hunter v. Roberts, etc., Co., (1890) 83 Mich. 63. — 14) Marcuse v. Gullett, etc., Co., (1900) 52 La. Ann. 1383. — 15) Anderson v. W. J. Dyer & Bro., (1904) 94 Minn. 30; Laurel Springs Land Co. v. Fougerey, (1893) 50 N. J. Eq. 756; cf. Crichton v. Webb Press Co., (1904) 113 La. 167. — 16) N. J. C. A., sec. 47, as amended P. L. 1901, p. 216, copied in N. M. Laws 1905, c. 79; and cf. N. C. Revisal of 1905, c. 21, sec. 1191. — 17) Del. G. C. L., sec. 34; Tenn. Shannon's Code 1896, sec. 2349; Tex. R. S. 663; cf. Bryan v. Sturgis Natl. Bank, (1905) 90 S. W. 704. — 18) But cf. Tennessee citation, note 17, supra.

resembling a dividend takes place, and a similar distribution may be made after the payment of corporate debts upon the winding up of the corporation. But these are not strictly dividends at all. Statutes in most states<sup>1)</sup>, and the common law in the absence of statutes<sup>2)</sup>, prohibit the payment of dividends out of capital except in a very limited class of corporations<sup>3)</sup>. Creditors have a right that the capital shall remain thus unimpaired for the satisfaction of their claims, and shareholders that it shall be preserved for the prosecution of the corporate business.

*What are Net Profits.* — Net profits may include not only the surplus, either current or the product of past years<sup>4)</sup>, of earnings over expenses, but also any gains in actual assets arising from an increase in value of the corporate property<sup>5)</sup>. The amount available for dividends may thus be ascertained by an appraisal of the actual assets of the corporation, and a deduction from this of the amount of the corporate capital stock<sup>6)</sup>. This method is frequently displaced or supplemented by the estimation of the net current revenues of the corporation as shown by the excess of current gains over working expenses<sup>7)</sup>. What constitute the working expenses of the corporation is hard to state definitely from the cases. It would appear that the assets of the corporation do not have to be first brought up to the nominal capital before a dividend can be declared out of the revenue<sup>8)</sup>, nor do losses from depreciation of value of the actual capital first have to be made good<sup>9)</sup>. Some courts, however, require a reserve fund to be established to provide for depreciation in the operating plant of a corporation<sup>10)</sup>. A corporation does not have to pay off its bonded indebtedness not yet matured before paying dividends<sup>11)</sup>, but it must pay the interest as one of the current expenses<sup>12)</sup>, and it is required usually to establish a sinking fund for the payment of the bonded debt as it falls due<sup>13)</sup>.

d) *Forms of Dividends.* — 1. *In General.* — Dividends are usually paid in cash<sup>14)</sup>, but where this is inconvenient and yet a dividend of some sort is deemed advisable by the directors — e. g. when the company is earning profits but wishes to keep its working capital employed in extending its business — other forms are resorted to, the principal of which are stock and scrip dividends. Another form of dividend is the property dividend, in which property instead of cash is divided among the shareholders; thus shares of stock in another company may be distributed as a dividend by the company holding them<sup>15)</sup>.

2. *Stock Dividends.* — A stock dividend is, in effect, an increase of the capital stock by the issue of new shares which represent the company's profit. These shares are distributed to the shareholders in proportion to their holdings<sup>16)</sup>. This plan retains the savings of the corporation in the form of capital, but enables the shareholders to increase their holdings out of the profits of their original investment. Since stock dividends are increases in the capital stock, they cannot be issued where the corporation has already issued all of the shares it is authorized by its articles to

<sup>1)</sup> Cal. Civ. Code, sec. 309; Conn. P. A. 1903, c. 194, sec. 5; Del. G. C. L., secs. 34, 35; Ill. G. C. L., sec. 19; La. Laws 1908, Act 241, secs. 1—3; Me. R. S., c. 47, secs. 32, 92; Minn. R. L., sec. 2869; N. J. C. A., sec. 30, and sec. 47 as amended P. L. 1901; N. Y. S. C. L., sec. 28; Tex. R. S. Art. 663; W. Va. Code, c. 53, sec. 39; Wis. S., sec. 1765. — <sup>2)</sup> Eyster v. Centennial Board of Finance, (1876) 94 U. S. 500, 504; Field v. Lamson & Goodnow Mfg. Co., (1894) 162 Mass. 388. — <sup>3)</sup> Cf. Cal. Civ. Code, sec. 309, and Baldwin v. Miller & Lux, (1907) 152 Cal. 254. — <sup>4)</sup> Beers v. Bridgeport Spring Co., (1875) 42 Conn. 17; Williams v. Western Union Telegraph Co., (1883) 93 N. Y. 162. — <sup>5)</sup> Roberts v. Roberts-Wicks Co., (1900) 184 N. Y. 257, 266; Oliver's Estate, (1890) 136 Pa. St. 43. — <sup>6)</sup> Hubbard v. Weare, (1890) 79 Ia. 678; cf. Richardson v. Buhl, (1889) 77 Mich. 632; Park v. Grant Locomotive Works, (1885) 40 N. J. Eq. 114. — <sup>7)</sup> St. John v. Erie Ry. Co., (1872) 10 Blatchf. 271; Cratty v. Peoria Law Library, (1906) 219 Ill. 516; Phillips v. Eastern R. R., (1884) 138 Mass. 122. — <sup>8)</sup> Goodnow

v. American Writing Paper Co., (1907) 72 N. J. Eq. 645; but cf. statute references in VI, D, 8, c, note 12, supra, especially Conn., Ill., La., Me., W. Va., and Wis., and Cutting v. New York, etc., R. Co., (1886) 54 Conn. 156. — <sup>9)</sup> Eyster v. Centennial Board of Finance, (1876) 94 U. S. 500, 503; Mackintosh v. Flint, etc., R. R. Co., (1888) 34 Fed. 582; Excelsior Water Co. v. Pierce, (1891) 90 Cal. 131. — <sup>10)</sup> Excelsior Water Co. v. Pierce, (1891) 90 Cal. 131; Whittaker v. Amwell Natl. Bank, (1894) 52 N. J. Eq. 400. — <sup>11)</sup> Cf. Gratz v. Redd, (1843) 4 B. Men. 178 (Ky.); cf. Hazeltine v. Belfast, etc., R. R., (1887) 79 Me. 411. — <sup>12)</sup> Mobile, etc., R. R. v. Tennessee, (1894) 153 U. S. 486; Gratz v. Redd, supra; Hazeltine v. Belfast, etc., R. R., supra. — <sup>13)</sup> Cases in note 12, supra. — <sup>14)</sup> Cf. Lancaster Trust Co. v. Mason, (1910) 68 S. E. 235, modifying s. c., (1909) 65 S. E. 1015. — <sup>15)</sup> Alleghany v. Pittsburg, etc., Ry., (1897) 179 Pa. St. 414. — <sup>16)</sup> Knapp v. Publishers', etc., Co., (1895) 127 Mo. 53; Jones v. Terre Haute, etc., R. R., (1874) 57 N. Y. 196.

issue. But if it amends the articles, or complies with the requirements of the statute under which increases of capital stock are permitted, the dividend will be legal<sup>1)</sup>. To be valid, a stock dividend like other dividends must be paid from profit, and only so much stock can be distributed as at par value would be equivalent to the surplus accumulated and added to the working capital, to justify the issue<sup>2)</sup>. The election between the payment of dividends in stock and in cash lies in the bona fide discretion of the directors<sup>3)</sup>. But if they act in bad faith and pay only in shares, when the interests of the corporation do not require them to keep the accumulated profits in the business, the shareholders can obtain a remedy in equity<sup>4)</sup>.

3. *Scrip Dividends*. — A scrip dividend is a distribution of certificates entitling the holder to rights set forth in the certificate. Common types are certificates which give the holder the right to exchange the scrip for stock after a certain time<sup>5)</sup>, or for money at a certain date<sup>6)</sup>; or which give him all the privileges of a shareholder except the right to vote<sup>7)</sup>. Scrip dividends, like others, should be paid from profits only, and are legal whenever the property of the company has increased to an amount equal to the amount of scrip issued.

e) Effect of the Declaration of a Dividend on the Rights of Shareholders. — A dividend once declared cannot be revoked<sup>8)</sup>, unless it has been improperly declared at a time when there was no fund from which it could be paid<sup>9)</sup>. As soon as it has been lawfully declared the dividend becomes a debt of the corporation, and each shareholder is entitled to his proportionate share upon demand, and can bring an action for it against the corporation<sup>10)</sup>. He is required in some states to make a demand before suing for his dividend<sup>11)</sup>, but in others the bringing of the suit is regarded as a sufficient demand<sup>12)</sup>. His right to interest arises when his demand is not complied with<sup>13)</sup>, and the statute of limitations begins to run against his claim from this time<sup>14)</sup>.

Prior to the declaration of the dividend the creditors of the corporation had, in case of the winding up of the corporation or its insolvency, a prior claim upon the surplus assets of the corporation, including the surplus profit<sup>15)</sup>. After the declaration the shareholders are, so far as the declared dividend is concerned, creditors of the corporation, and on a par with other creditors<sup>16)</sup>. And if the corporation has not merely declared the dividend, but has appropriated and set aside a fund for its payment, it becomes a trustee of this fund for the shareholders, who are entitled to it as beneficiaries to the exclusion of the ordinary creditors of the corporation<sup>17)</sup>.

The shareholder's claim to a dividend is subject to be offset by any liquidated claim the corporation has against the shareholder as such<sup>18)</sup>.

f) Who are Entitled to Dividends. — 1. *In General*. — Unless he is under some agreement restricting his right, everyone who holds shares in a corporation at the time a dividend is declared is entitled to participate in it in proportion to his shares<sup>19)</sup>.

1) *Bailey v. Railroad Co.*, (1874) 22 Wall. 604, 635; *Great Western, etc., Co. v. Harris*, (1903) 128 Fed. 321, affirmed s. c., 198 U. S. 561; *Rand v. Hubbell*, (1874) 115 Mass. 461. — 2) *Cockrill v. Abcles*, (1898) 86 Fed. 505; *Alsop v. DeKoven*, (1903) 107 Ill. App. 190; *Williams v. Western Union Telegraph Co.*, (1883) 93 N. Y. 162, 189. — 3) *Schell v. Alston Mfg. Co.*, (1906) 149 Fed. 439; *Howell v. Chicago, etc., Ry.*, (1868) 51 Barb. 378. — 4) Cf. *Williams v. Western Union Telegraph Co.*, supra. — 5) Cf. *Miller v. Illinois Central R.*, (1857) 24 Barb. 312. — 6) Cf. *Billingham v. Gleason Mfg. Co.*, (1905) 91 N. Y. Supp. 1046, affirmed 185 N. Y. 571. — 7) Cf. *Bailey v. Railroad Co.*, (1874) 22 Wall. 604, 635. — 8) *Beers v. Bridgeport Spring Co.*, (1875) 42 Conn. 17; *McLaren v. Crescent, etc., Co.*, (1906) 117 Mo. App. 40; *Re LeBlanc*, (1878) 14 Hun. 8, affirmed 75 N. Y. 598; but cf. *Ford v. Easthampton, etc., Co.*, (1893) 158 Mass. 84. — 9) Cf. *Berryman v. Bankers', etc., Co.*, (1907) 102 N. Y. Supp. 695. — 10) *Keppel v. Petersburg R. R.*, (1868) Chase 167; *Beers v. Bridgeport Spring Co.*, supra; *Searles v. Gebbie*, (1906)

101 N. Y. Supp. 199, affirmed 190 N. Y. 533. — 11) *Hagar v. Union Natl. Bank*, (1874) 63 Me. 509; *King v. Paterson, etc., R. R.*, (1860) 29 N. J. L. 504; *Scott v. Central R. R., etc., Co.*, (1868) 52 Barb. 45; cf. *Redhead v. Iowa Natl. Bank*, (1905) 127 Ia. 572. — 12) *Keppel v. Petersburg R. R.*, supra; *Robinson v. Berne Bank*, (1884) 95 N. Y. 637. — 13) *Keppel v. Petersburg R. R.*, supra; cf. *Mustard v. Union Natl. Bank*, (1893) 86 Me. 177. — 14) *Citizens', etc., Co. v. Belleville, etc., R. R.*, (1907) 157 Fed. 73; *Redhead v. Iowa Natl. Bank*, supra; cf. *Kobogum v. Jackson Iron Co.*, (1889) 70 Mich. 498. — 15) *Vide infra* XI, A. — 16) *Hunt v. O'Shea*, (1899) 69 N. H. 700; *Lowne v. American Fire Ins. Co.*, (1837) 6 Paige 482 (N. Y.). — 17) *McLaren v. Crescent, etc., Co.*, (1906) 117 Mo. App. 40; *Le Roy v. Globe Ins. Co.*, (1836) 2 Edw. Ch. 657 (N. Y.); *Re LeBlanc*, (1878) 14 Hun. 8. — 18) *Kennedy v. Citizens' Natl. Bank*, (1905) 128 Ia. 561; *Hagar v. Union Natl. Bank*, (1874) 63 Me. 509. — 19) *Cratty v. Peoria Law Library Assn.*, (1906) 219 Ill. 516.

It is immaterial that he has just acquired his shares<sup>1)</sup>, or that he has not completed payment for them<sup>2)</sup>, or has not received his certificate<sup>3)</sup>. Shares may be divided into classes which by agreement receive dividends under different conditions<sup>4)</sup>, but between shareholders of the same class there should be no discrimination<sup>5)</sup>; and an injunction may be had by a shareholder to prevent it<sup>6)</sup>; or he may sue at law<sup>7)</sup> or in equity<sup>8)</sup> to collect his rightful share.

2. *As against the Corporation.* — If the corporation has kept its register of shareholders properly<sup>9)</sup>, it will be protected in paying in good faith dividends to those persons whose names appear there<sup>10)</sup> at the time the dividend is declared. But if it knows that such registered person has transferred his shares to a third party, it must pay the dividend to the transferee even though he is not yet registered<sup>11)</sup>. It may also refuse to pay the person registered if his registration has been obtained by fraud, or on a forged certificate<sup>12)</sup>, or if, as between him and a third party, he is not entitled to the dividend<sup>13)</sup>. In so refusing, however, the corporation acts at its peril, and must show that the one registered as holder had no right to the dividend<sup>14)</sup>.

3. *As between the Registered Holder and Third Parties.* — Even though the registered owner could, in the absence of notice, collect a dividend from the corporation, he may be bound to account for it to some third party. In the case of a sale of shares, in the absence of any stipulation all dividends declared before the transfer, even though made payable at a date after the date of the transfer, go to the transferor<sup>15)</sup>, and all declared after the actual transfer, even before its registration on the books of the corporation, go to the transferee<sup>16)</sup>. This, however, may be lawfully be changed by agreement between the parties<sup>17)</sup>. As between a pledgee and his pledgor, the pledgee is entitled to the dividends<sup>18)</sup>. If he is registered on the books either as owner<sup>19)</sup> or as pledgee<sup>20)</sup> he can collect from the corporation, and if he is not registered but gives notice of his rights to the corporation before they pay a dividend to his pledgor, it will be liable to him if subsequently it pays the pledgor<sup>21)</sup>. A legatee of shares is entitled to all dividends declared after the testator's death, but the executor takes all declared before that time, even though payable afterward<sup>22)</sup>. As between a specific legatee and the residuary legatee, the former takes all dividends declared after the testator's death<sup>23)</sup>, and the latter all declared prior to that time<sup>24)</sup>.

4. *As between Tenants for Life or for a Term of Years and Remaindermen.* — a) **IN GENERAL.** — Where shares of stock are given by will or are placed in trust, to pay the income and profits to one person for life or for a term of years, and to turn over the shares to another on the termination of this estate, the regular cash dividends declared during the life estate or term are in almost all jurisdictions held to belong to the tenant, even if earned prior to the creation of his estate<sup>25)</sup>; and, on the other hand, those declared after the termination of that estate to belong to the remainder-

<sup>1)</sup> Jones v. Terre Haute & Richmond R. Co., (1859) 29 Barb. 353, affirmed, (1874) 57 N. Y. 196. — <sup>2)</sup> Central R. R. Co. v. Papot, (1877) 59 Ga. 342. — <sup>3)</sup> South Dakota v. North Carolina, (1904) 192 U. S. 286. — <sup>4)</sup> Vide infra, VI, D, 9. — <sup>5)</sup> State v. Baltimore, etc., R. R., (1848) 6 Gill 363 (Md.); Jones v. Terre Haute & Richmond R. Co., supra. — <sup>6)</sup> Cf. Meyers v. Scott, (1888) 2 N. Y. Supp. 753. — <sup>7)</sup> Southwestern, etc., Ry. v. Martin, (1893) 57 Ark. 355. — <sup>8)</sup> Beers v. Bridgeport Spring Co., (1875) 42 Conn. 17; Cratty v. Peoria Law Library Assn., supra. — <sup>9)</sup> Cf. Robinson v. New Berne Natl. Bank, (1884) 95 N. Y. 637. — <sup>10)</sup> Brisbane v. Delaware, etc., R. R., (1883) 94 N. Y. 204; Donnally v. Hearn-don, (1895) 41 W. Va. 519. — <sup>11)</sup> Timberlake v. Shippers' Express Co., (1894) 72 Miss. 323; Steel v. Island City, etc., Co., (1906) 47 Ore. 293. — <sup>12)</sup> Cf. Telegraph Co. v. Davenport, (1878) 97 U. S. 369. — <sup>13)</sup> Bates v. Androscoggin, etc., R. R. Co., (1860) 49 Me. 491. — <sup>14)</sup> Boyd v. Conshohocken Worsted Mills, (1892) 149 Pa. St. 363. — <sup>15)</sup> Wheeler v. Northwestern Sleigh Co., (1889) 39 Fed. 347; Redhead v. Iowa Natl. Bank, (1905) 127 Ia. 572; Hopper

v. Sage, (1889) 112 N. Y. 530. — <sup>16)</sup> March v. Eastern R. R. Co., (1862) 43 N. H. 515; Farmers' & Merchants' Natl. Bank v. Mosher, (1901) 63 Nebr. 130. — <sup>17)</sup> Rivers v. Oak, etc., Co., (1899) 52 La. Ann. 762; Hancock v. Clark, (1896) 68 Vt. 302. — <sup>18)</sup> Reid v. Caldwell, (1904) 120 Ga. 718; and cf. Hill v. Newichawanic Co., (1877) 8 Hun. 459, affirmed (1877) 71 N. Y. 593. — <sup>19)</sup> Boyd v. Conshohocken Worsted Mills, (1892) 149 Pa. St. 363. — <sup>20)</sup> Hunt v. Laconia, etc., Ry. Co., (1896) 68 N. H. 561; Page Belting Co. v. Prince, (1907) 74 N. H. 262. — <sup>21)</sup> Guarantee Co. v. East Rome Town Co., (1895) 96 Ga. 511; Central, etc., Bank v. Wilder, (1891) 32 Nebr. 454. — <sup>22)</sup> Re Kernochan, (1887) 104 N. Y. 618. — <sup>23)</sup> Connecticut, etc., Co. v. Hollister, (1901) 74 Conn. 228; Loring v. Woodward, (1860) 41 N. H. 391. — <sup>24)</sup> Brundage v. Brundage, (1873) 60 N. Y. 544; Perry v. Maxwell, (1834) 2 Dev. Eq. 488 (N. C.). — <sup>25)</sup> Davis v. Jackson, (1890) 152 Mass. 58; Re Kernochan, supra; and cf. Earp's Appeal, (1857) 28 Pa. St. 368, 375; but cf. Lang v. Lang, (1898) 57 N. J. Eq. 325.

man<sup>1</sup>). In the case, however, of special or extraordinary dividends distinguishable from the regular periodic ones — for example, a dividend arising from the distribution of a surplus which the corporation has been accumulating for more than the period ordinarily elapsing between regular dividends, or from the distribution of an excess of actual over nominal capital due to an appreciation in value of the corporate property — different jurisdictions are governed by different rules. All agree that the intent of the maker of the will or the deed of trust must be carried out as to the distribution if this intent can be ascertained<sup>2</sup>). But if not, the division between the tenant and the remainderman will depend upon the rule followed by the state the law of which governs the construction of the will or deed constituting the estate<sup>3</sup>).

**b) THE MASSACHUSETTS RULE.** — In Massachusetts and Illinois the rule is that all cash dividends declared during the period of the life estate or term of years go to the tenant for life or years, and, on the other hand, all stock dividends, as paid from capital, go with the corpus of the estate to the remainderman<sup>4</sup>). Property dividends, and scrip dividends redeemable later in cash or property, are treated as cash dividends<sup>5</sup>). The Massachusetts rule has been approved and followed in the United States Supreme Court<sup>6</sup>), and in many cases in other jurisdictions<sup>7</sup>).

**c) THE PENNSYLVANIA RULE.** — A number of courts follow the rule worked out in the Pennsylvania decisions, to the effect that all extraordinary dividends, whether cash or stock, are to be apportioned between the life tenant and the remainderman according to whether the fund from which they are derived was earned during the period of the tenancy or not<sup>8</sup>).

**d) OTHER RULES.** — Variations from these rules appear in numerous decisions, and it is not always possible to reconcile the decisions of a single jurisdiction<sup>9</sup>).

**g) Dividends Illegally Paid. — 1. Liability of Directors.** — The payment of dividends when they have not been earned is a wrong to the corporation, to the shareholders, and to creditors; and in most states penalties are imposed by statutes upon directors who make or permit such payment. In some states the mere fact that the dividend has been illegally paid is sufficient to make all the directors liable<sup>10</sup>); in others the penalty is imposed on directors who voted for the payment, or those who either voted for it or failed to register a protest<sup>11</sup>); in others the act must have been done with knowledge<sup>12</sup>). Even in the absence of statute, the directors will be liable to the corporation for illegal payment of dividends<sup>13</sup>) if the payment were made with knowledge or negligently, though not if they acted under a *bonâ fide* mistake of fact as to the existence of a fund from which the fund could lawfully be paid<sup>14</sup>). But a shareholder who has received the illegal dividend cannot sue on behalf of the corporation<sup>15</sup>), unless he has received it in good faith without knowledge that it was illegal<sup>16</sup>).

**2. Liability of Shareholders.** — If a shareholder receives a dividend knowing it to be illegally paid, he is liable for the amount he has received to the corporation, or

<sup>1</sup>) *Mann v. Anderson*, (1899) 106 Ga. 818; *Foote, Appellant*, (1839) 39 Mass. 299. — <sup>2</sup>) *Green v. Bissell*, (1907) 79 Conn. 547; *In re James*, (1895) 146 N. Y. 78. — <sup>3</sup>) *Mercer v. Buchanan*, (1904) 132 Fed. 501. — <sup>4</sup>) Mass.: *Minot v. Payne*, (1868) 99 Mass. 101; *Leland v. Hayden*, (1869) 102 ib. 542; *Lyman v. Pratt*, (1903) 183 ib. 58. — Ill.: *De Koven v. Alsop*, (1903) 205 Ill. 309; *Billings v. Warren*, (1905) 216 ib. 281; and cf. *Blinn v. Gillett*, (1904) 208 ib. 473. — <sup>5</sup>) *Green v. Bissell*, supra; *Waterman v. Alden*, (1893) 144 Ill. 90; *D'Ooge v. Leeds*, (1900) 176 Mass. 558. — <sup>6</sup>) *Gibbons v. Mahon*, (1890) 136 U. S. 549; but cf. *Mercer v. Buchanan*, supra. — <sup>7</sup>) *Smith v. Dana*, (1905) 77 Conn. 543; *Millen v. Guerrard*, (1881) 67 Ga. 284; *Richardson v. Richardson*, (1884) 75 Me. 570; *Green v. Smith*, (1890) 77 R. I. 28. — <sup>8</sup>) *Earp's Appeal*, (1857) 28 Pa. St. 368; *Appeal of Boyer*, (1909) 224 Pa. St. 144; *Lord v. Brooks*, (1872) 52 N. H. 72; *Ex parte Rutledge*, (1824) 1 Harp. Eq. 65 (S. C.); *Pritchett v. Nashville Trust Co.*, (1895) 36 S. W. 1064 (Tenn.). — <sup>9</sup>) N. J.: apportions both ordinary

and extraordinary dividends, and both cash and stock dividends. *Lang v. Lang*, (1898) 57 N. J. Eq. 325. N. Y.: cf. *Re Kernochan*, (1887) 104 N. Y. 618, and *McLouth v. Hunt*, (1897) 154 N. Y. 179; *Richmond v. Richmond*, (1909) 196 N. Y. 535. — <sup>10</sup>) Cal. Civ. Code, sec. 309; Del. G. C. L., sec. 35; Minn. cf. R. L., sec. 2884; N. J., C. A., sec. 30, as amended P. L. 1904, p. 275; N. Y. S. C. L., sec. 28; Penal Law, sec. 664; Pa. L. 1874, p. 73, sec. 9. — <sup>11</sup>) Conn. P. A. 1903, c. 194, sec. 5; Ill. G. C. L., sec. 19; Me. R. S., c. 47, sec. 32; Mass. B. C. L., sec. 35. — <sup>12</sup>) Mich. C. A., sec. 22; Tex. R. S., Art. 670. — <sup>13</sup>) *Cockrill v. Abeles*, (1898) 86 Fed. 505; *Osgood v. Laytin*, (1867) 3 Keyes 521 (N. Y.); cf. *Gratz v. Redd*, (1843) 4 B. Mon. 178 (Ky.). — <sup>14</sup>) *Fuller v. Chick*, (1902) 114 Fed. 22; *Davenport v. Lines*, (1905) 77 Conn. 473; *Excelsior Petroleum Co. v. Lacey*, (1875) 63 N. Y. 422. — <sup>15</sup>) *Siegman v. Maloney*, (1902) 63 N. J. Eq. 422. — <sup>16</sup>) *Appleton v. American Malting Co.*, (1903) 65 N. J. Eq. 375; cf. *Gaffney v. Colvill*, (1844) 6 Hill 567 (N. Y.).



in equity to creditors, or to a dissenting shareholder<sup>1</sup>). If he receives it in honest ignorance of the fact that it is illegally paid, and if the corporation was solvent at the time, it seems that he is not bound to repay it<sup>2</sup>). But if the corporation was at the time insolvent, his good faith will not be a defence to him in a suit to compel repayment<sup>3</sup>). The statute of limitations, however, begins to run in favor of a shareholder from the time of payment of the dividend, so far at least as the corporation is concerned<sup>4</sup>).

9. SPECIAL CLASSES OF SHARES AND THE SPECIAL RIGHTS OF THEIR HOLDERS. — a) In General. — Besides the ordinary shares, which are usually, when there are more than one class, differentiated from the special sorts by being spoken of as common or deferred shares, corporations may, under their original articles or by a proper amendment thereto, have authority to issue special kinds of shares possessing superior rights over the common shares or different rights from these. Such special kinds are variously known as preferred, guaranteed, or interest-bearing shares. These are all practically identical with one another<sup>5</sup>). In general they are shares which entitle their holders to receive a dividend from the earnings of the corporation before any dividend is distributed to the common stock<sup>6</sup>). They may also entitle the holders to different rights in the distribution of capital, or in voting at shareholders' meetings, or in the exercise of other rights of shareholders. The exact character of a particular issue depends on the terms of the particular agreement under which a corporation issues them, and so varies from corporation to corporation<sup>7</sup>).

b) Preferred Shares. — 1. *Creation*. — Statutory authority for the creation of preferred shares is very general<sup>8</sup>), but even in the absence of statute such shares may be created by the agreement of all the shareholders of a corporation. This is quite usually done by by-law at the commencement of the corporate life<sup>9</sup>), and even after common stock has been issued and business commenced a unanimous consent will validate the creation of a class of preferred shares<sup>10</sup>). But an issue without unanimous consent can be enjoined by any shareholder<sup>11</sup>) who has not acquiesced<sup>12</sup>) or otherwise become estopped<sup>13</sup>), and who is not barred by laches<sup>14</sup>).

2. *Rights and Liabilities of Preferred Shareholders*. — a) **IN GENERAL; RIGHT TO DIVIDENDS**. — Holders of preferred stock are none the less shareholders, and differ from the holders of common stock only in some incidents of an essentially similar contract of membership<sup>15</sup>). They are entitled to dividends at a rate specified in their contracts<sup>16</sup>), and to be paid thus before any dividend is made to common shareholders<sup>17</sup>); but they are not entitled to dividends unless profits have been earned<sup>18</sup>), nor can they, in the ordinary case, compel the declaration of a dividend, even when sufficient profits have been earned to pay it, if in the judgment of the directors no dividend should be declared<sup>19</sup>). They are not creditors of the corporation except as

1) *Finn v. Brown*, (1891) 142 U. S. 56; *American, etc., Co. v. Eddy*, (1902) 130 Mich. 266; *Gager v. Paul*, (1901) 111 Wis. 638. —

2) *McDonald v. Williams*, (1899) 174 U. S. 397; *Great Western, etc., Co. v. Harris*, (1903) 128 Fed. 321, affirmed 198 U. S. 561. —

3) *Hayden v. Williams*, (1899) 96 Fed. 279.

— 4) *Hayden v. Thompson*, (1895) 71 Fed. 60.

— 5) *Cratty v. Peoria Law Library Assn.*, (1906) 219 Ill. 516. — 6) *Chaffee v. Rutland R. R.*, (1882) 55 Vt. 110. — 7) Cf. *Hackett v. Northern Pacific Ry. Co.*, (1905) 140 Fed. 717; and *Bailey v. R. R. Co.*, (1874) 17 Wall. 96. — 8) Cal. Civ. Code, sec. 290 (6); Conn. P. A. 1903, c. 194, sec. 63 (4); Del. G. C. L., sec. 13; Me. R. S., c. 47, sec. 49; Mass. B. C. L., secs. 8 (e), 27; Mich. C. A., sec. 35; Minn. R. L., sec. 2878; N. J. C. A., sec. 18, as amended P. L. 1901, p. 245; N. Y. S. C. L., sec. 61; Pa. Act of 1874, secs. 16, 39 (1); W. Va. Code, c. 53, sec. 16, amended 1901 Acts, 35; Wis. S., sec. 1759a; L. 1907, p. 415. For power to create preferred shares by amending the corporate articles, vide supra, VI, D, 6, b. — 9) *Toledo, etc., R. R. v. Continental Trust Co.*, (1899) 95 Fed. 497, 531; *Synnott v. Cumberland,*

*etc.*, Assn. (1902) 117 Fed. 379; and cf. *Kent v. Quicksilver Mining Co.*, (1879) 78 N. Y. 159. — 10) *Bates v. Androscooggin, etc., R. R.*, (1860) 49 Me. 491; *Breslin v. Fries-Breslin Co.*, (1904) 70 N. J. L. 274. — 11) *Campbell v. American Zylonite Co.*, (1890) 122 N. Y. 455; *Knoxville, etc., R. R. v. Knoxville*, (1896) 98 Tenn. 1. — 12) *Branch v. Jesup*, (1886) 106 U. S. 468; and cf. *Manufacturers' Paper Co. v. Allen-Higgins Co.*, (1907) 154 Fed. 906. —

13) *Banigan v. Bard*, (1890) 134 U. S. 291. —

14) *Taylor v. Smith, etc., R. R.*, (1882) 13 Fed. 152; *Higgins v. Lansingh*, (1895) 154 Ill. 301; *Kent v. Quicksilver Mining Co.*, supra. —

15) Cf. *People v. Miller*, (1902) 180 N. Y. 16. —

16) Cf. statutes cited VI, D, 9, b, 1, note 8, and *Scott v. Baltimore, etc., R. R.*, (1901) 93 Md. 475. — 17) *Totten v. Tison*, (1875) 54 Ga. 139; *Miller v. Ratterman*, (1890) 47 Ohio St. 141. — 18) *Wilson v. Parvin*, (1903) 119 Fed. 652; *Cratty v. Peoria Law Library Assn.*, (1906) 219 Ill. 516. — 19) *New York, etc., R. R. v. Nickals*, (1886) 119 U. S. 296; *Field v. Lamson, etc., Co.*, (1894) 162 Mass. 388; but cf. *Storrow v. Texas, etc., Mfg. Co.*, (1898) 87 Fed. 612.



any shareholder is after a dividend is declared, as to his share of that dividend<sup>1</sup>). They are, therefore, not entitled to a parity with creditors in a distribution of the corporate assets<sup>2</sup>), nor are they exempt from the liability of shareholders to creditors<sup>3</sup>). Where, however, a statute conferred on them a lien on corporate assets prior to that of a subsequent mortgagee, the statute was upheld<sup>4</sup>).

Preferred shares may be cumulative or non-cumulative. In the former case, all arrears of dividends must be paid the preferred holders before any division can be made to the common shares<sup>5</sup>). In the latter case, each dividend period stands by itself<sup>6</sup>). The share certificate or the shareholder's contract usually specifies which class of preferred stock the shareholder possesses. In the absence of specification, the shares are cumulative<sup>7</sup>). It has been held that after the preferred shareholder has received his contract percentage he is not, unless his contract expressly provides otherwise, entitled to a further distribution of profits even after the common shareholders have received a dividend equal to the preferred shareholder's<sup>8</sup>).

**b) AS TO DISTRIBUTION OF CORPORATE ASSETS.** — Statutes frequently provide that holders of preferred shares may be given a preference over holders of common shares in the distribution of corporate assets upon winding up<sup>9</sup>). In jurisdictions under these statutes this right is an incident of all preferred shares unless there is an express stipulation otherwise<sup>10</sup>). In other jurisdictions the right may be contracted for in express terms<sup>11</sup>), but will not be implied<sup>12</sup>).

**c) AS TO VOTING.** — In the absence of stipulation to the contrary, preferred shareholders vote like other shareholders; but an express waiver of their rights is not infrequently required, and when made will be upheld even where the right to vote is given to shareholders by statute<sup>13</sup>).

**VII. DISSOLUTION OF CORPORATIONS. — A. In General.** — The existence of a business corporation may be terminated by the action of the state, the voluntary action of the corporation approved by the state, or the action of a creditor or shareholder under statutory authority. The state may repeal a charter by legislative act, may forfeit it in a judicial proceeding, or may, by the terms of the act under which it comes into being, set a fixed or contingent maximum period for its existence. The corporation may surrender its franchises, and if the surrender is accepted by the state the corporate life will be thereby terminated. Creditors or shareholders may be empowered by statute to bring about a dissolution by appropriate proceedings. These various methods of termination will now be considered.

**B. Modes of Dissolution. — 1. REPEAL OF CHARTER.** — At common law, in the absence of any specific limitation of its duration, a corporation once created was entitled to perpetual existence unless it voluntarily surrendered its charter, or unless it exposed itself, by non-user or misuser of its franchises, to forfeiture at the hands of the state. Since the charter embodied a contract which the state could not impair by subsequent legislation, it was safe against repeal. But to-day, under the reserved powers of the states<sup>14</sup>), the life of a corporation may be terminated in accordance with the terms of the reservation<sup>15</sup>).

<sup>1</sup>) *Hamlin v. Toledo, etc., R. R.*, (1897) 78 Fed. 664; *Belfast, etc., R. R. v. Belfast*, (1885) 77 Me. 445; *Miller v. Ratterman*, (1890) 47 Ohio St. 141. — <sup>2</sup>) *Warren v. King*, (1882) 108 U. S. 389; *Guaranty, etc., Co. v. Galveston, etc., R. R.*, (1901) 107 Fed. 311. — <sup>3</sup>) *Kirkpatrick v. American Alkali Co.*, (1905) 140 Fed. 186; *American Steel, etc., Co. v. Eddy*, (1902) 130 Mich. 266. Statutes sometimes expressly provide this; cf. Cal., Del., Mich., and N. J. in note 8, VI, D. 9, b, 1. — <sup>4</sup>) *Heller v. National, etc., Bank*, (1899) 89 Md. 602. — <sup>5</sup>) *Boardman v. Lake Shore, etc., Ry. Co.*, (1881) 84 N. Y. 157. — <sup>6</sup>) *Hazeltine v. Belfast, etc., R. R.*, (1887) 79 Md. 411; *Elkins v. Camden, etc., R. R. Co.*, (1882) 36 N. J. Eq. 233. — <sup>7</sup>) *Bates v. Androscooggin, etc., R. R.*, (1860) 49 Me. 491; *Westchester, etc., R. R. v. Jackson*, (1875) 77 Pa. St. 321. — <sup>8</sup>) *Scott v. B. & O. R. R. Co.*, (1901) 93 Md. 475. — <sup>9</sup>) See statutes

cited in note 8, VI, D. 9, b, 1. — <sup>10</sup>) *Toledo, etc., R. R. Co. v. Continental Trust Co.*, (1899) 95 Fed. 497; *McGregor v. Home Ins. Co.*, (1880) 33 N. J. Eq. 181. — <sup>11</sup>) *Hamlin v. Toledo, etc., R. R.*, (1897) 78 Fed. 664. — <sup>12</sup>) *Coltrane v. Baltimore, etc., Assn.*, (1901) 110 Fed. 281; *Forwood v. Eubank*, (1899) 106 Ky. 291. — <sup>13</sup>) *State ex rel. Frank v. Swanger*, (1905) 190 Mo. 561. — <sup>14</sup>) *Vide* XIII, A, and B. — <sup>15</sup>) Cal. Const., Art. XII, sec. 1; Conn. P. A. 1903, c. 194, sec. 43; Del. G. C. L., sec. 140; Ill. G. C. L., sec. 9; La. Const., Arts. 262, 263, 275; Me. R. S., c. 47, sec. 2; Mass. B. C. L., sec. 2; Mich. Const., Art. XII, sec. 1; N. J. Const. of 1875, Art. IV, sec. 7 (11); C. A., secs. 5, 118; N. Y. Const., Art. VIII, sec. 1; G. C. L., sec. 320; Pa. Const., Art. XVI, sec. 10; Act of 1874, sec. 4; Tex. Const., Art. XII, sec. 3; R. S., Art. 650; W. Va. Code, c. 53, sec. 8; Wis. Const., Art. XI, sec. 1.

## 2. DISSOLUTION BY FORFEITURE OF CORPORATE FRANCHISES. —

a) In General. — The state can dissolve by a proceeding in a court of law any corporation which has been guilty of serious non-user or misuser of its corporate franchise<sup>1</sup>). The forfeiture takes effect only upon a judgment had in a court of competent jurisdiction<sup>2</sup>). The statutes frequently set forth certain acts and omissions as causes of forfeiture<sup>3</sup>), and in such cases upon proof that the corporation has been guilty of such acts or omissions the court must render judgment of ouster against it<sup>4</sup>). Apart from such statutory provisions, a court has discretion to determine whether to forfeit the charter or merely prevent the continuance of the unlawful conduct of the corporation<sup>5</sup>). Not every breach of the provisions or conditions of the corporate franchise, nor every excess of the corporate powers will be deemed worthy of such drastic punishment<sup>6</sup>). But if not merely the corporate interest but the public welfare is menaced or harmed, then the courts will recognize this as a ground of forfeiture<sup>7</sup>). They will do so even though some other form of punishment may be provided<sup>8</sup>). Until the forfeiture has been decreed, however, the corporation is none the less a corporation because of an existing cause of forfeiture, and this cause cannot be set up collaterally in actions brought by or against the corporation<sup>9</sup>). Even when a charter is granted on conditions subsequent, unless the language of the grant is unmistakably intended to mean that noncompliance ipso facto works a forfeiture<sup>10</sup>), a noncompliance will be regarded merely as a ground of forfeiture to be availed of by the state in proper proceedings, and not capable of being set up collaterally<sup>11</sup>).

b) Grounds for Forfeiture. — It is difficult to frame general statements of what will be considered by the courts ground for forfeiture, in the absence of statutory prescription, since the matter lies so much within the discretion of the court, and depends on the particular circumstances of each case<sup>12</sup>). A materially defective compliance with conditions either precedent or subsequent to incorporation is a usual ground<sup>13</sup>). An excess of powers granted to the corporation, or a violation of prohibitions imposed on it by either its charter or the general law, will be ground for forfeiture if wilful and dangerous to the public<sup>14</sup>); but an ultra vires act done under bona fide mistake or not seriously inimical to the public interest will not be thus punished<sup>15</sup>).

<sup>1</sup>) *Terrett v. Taylor*, (1815) 9 Cranch. 43. 51. — <sup>2</sup>) *Matter of Brooklyn Elevated R. Co.*, (1891) 125 N. Y. 434; cf. *People v. New York City Ry. Co.*, (1907) 107 N. Y. Supp. 247; and cf. *supra*, II, I. — <sup>3</sup>) Cal. Civ. Code, sec. 358; Franchise Tax Act, March 20, 1905, with amendments June 13, 1906, March 19, 1907, March 19, 1909; Anti-Trust Act, March 23, 1907, with amendments L. 1909, c. 362; Conn. P. A. 1903, c. 267; P. A. 1909, c. 160; Del. Const., Art. IX, sec. 1; G. C. L., sec. 67; Tax L., secs. 10—14; Ill. G. C. L., sec. 4; Act May 10, 1901, sec. 2, amended Starr & Curt., vol. V, p. 139; Anti-Trust Act, L. 1891, p. 206, 7 a and b, as amended by Act of May 25, 1907; La. R. S. of 1870, sec. 688; Act 90 of 1892, sec. 2; Me. Publ. Laws 1909, c. 127, sec. 1; Mass. B. C. L., secs. 49, 50; L. 1909, c. 490, Part III, sec. 58; Mich. C. L. 1897, secs. 8618, 8657, 9354 m; C. A., sec. 12, as amended by Act No. 137, P. A. 1907; Minn. R. L. 1905, secs. 3174, 5168, 5170; L. 1907, c. 269; N. J. P. L. 1905, c. 259, secs. 1, 2; N. Y. G. C. L., secs. 36, 32, 101, 102, 130—136; Pa. L. 1889, p. 241; L. 1883, p. 122, sec. 5; Tex. G. L., secs. 2, 4, p. 310, Acts 1907; G. L. of 1903, 28th Legislature, c. XCIV, p. 119, secs. 5—8; W. Va. Code, c. 53, secs. 7 and 17; 1907 Special Session, c. 9, sec. 5; Code, c. 32, sec. 136, amended 1907 Special Session, c. 16, sec. 136; Wis. S., secs. 1763, 1774a; L. 1907, p. 420; P. I. cf. C. L., secs. 76 and 77. — <sup>4</sup>) *State v. Delmar Jockey Club*, (1905) 200 Mo. 34; *People v. Buffalo Stone & Cement Co.*, (1892) 131 N. Y. 140; *State v. Cumberland Telegraph Co.*, (1905)

114 Tenn. 194. — <sup>5</sup>) *State v. U. S. Endowment & Trust Co.*, (1904) 140 Ala. 610; *State v. Oberlin Building & Loan Assn.*, (1880) 35 Ohio St. 258. — <sup>6</sup>) *Bixler v. Summerfield*, (1904) 210 Ill. 66; *State v. Société Républicaine*, (1880) 9 Mo. App. 114; *People v. Atlantic Ave. R. Co.*, (1891) 125 N. Y. 513. — <sup>7</sup>) *Illinois Trust & Savings Bank v. Doud*, (1900) 105 Fed. 123; *People v. Rosenstein Cohn Cigar Co.*, (1900) 131 Cal. 153; *People v. North River Sugar Refining Co.*, (1890) 121 N. Y. 582. — <sup>8</sup>) Cf. *People v. Kankakee River Improvement Co.*, (1882) 103 Ill. 491. — <sup>9</sup>) *Heard v. Talbot*, (1856) 7 Gray 113; *Nicolai v. Maryland, etc., Assn.*, (1903) 96 Md. 323. — <sup>10</sup>) *Oakland R. Co. v. Oakland, Brooklyn, etc., R. R.*, (1873) 45 Cal. 365; *Brooklyn Steam Transit Co. v. City of Brooklyn*, (1879) 78 N. Y. 524. — <sup>11</sup>) *Utah, N., etc., R. Co. v. Utah & C. R. Co.*, (1901) 110 Fed. 879; cf. *Kaiser Land & Fruit Co. v. Curry*, (1909) 155 Cal. 638; *New York v. Long Island Bridge Co.*, (1896) 148 N. Y. 540. — <sup>12</sup>) Cf. *State v. United States, etc., Co.*, (1904) 140 Ala. 610; *State v. Minnesota, etc., Co.*, (1889) 40 Minn. 213. — <sup>13</sup>) See II, I, *supra*. — <sup>14</sup>) *H. Scherer & Co. v. Everest*, (1909) 168 Fed. 822; *State v. Delmar Jockey Club*, (Mo., 1906) 98 S. W. 53, affirmed 210 U. S. 324; *State v. Standard Oil Co.*, (Mo., 1909) 116 S. W. 902; *State v. Standard Oil Co.*, (1892) 49 Ohio St. 137. — <sup>15</sup>) *State v. Tampa Water Works Co.*, (Fla. 1909) 48 So. 639; *Bixler v. Summerfield*, (1904) 210 Ill. 66; *People v. Ulster, etc., Ry.*, (1891) 128 N. Y. 240; *State v. Essex Bank*, (1836) 8 Vt. 489.

A more fitting measure will be a prevention of continuance of the illegal acts<sup>1)</sup>. Non-user of the corporate franchise may be a cause for forfeiture of the charter of even a private business corporation, where the abandonment of the business is unexplained, and for a sufficiently long time to justify the belief that it is permanent<sup>2)</sup>. So in some cases the alienation of all the property possessed by the corporation, or even its lease, may be a ground for forfeiture if a detriment is thereby caused the public<sup>3)</sup>.

c) Waiver of Forfeiture. — In the absence of express statutory provision, the state alone has the right to bring proceedings for the forfeiture of a corporate charter<sup>4)</sup>. Even the state must do so in direct proceeding, and cannot collaterally<sup>5)</sup>. The state can, however, waive its right to enforce the forfeiture, and in such a case neither the state nor individuals can subsequently set up or enforce it<sup>6)</sup>. The intention of the state to waive may be express<sup>7)</sup>, or may be implied from any recognition by the state of the corporation as legally existent after the cause of forfeiture is or should be known by the state to have arisen<sup>8)</sup>, if such recognition is inconsistent with a determination to have the charter forfeited<sup>9)</sup>; as for instance the grant of an amended charter<sup>10)</sup>, or an extension of time to do a work required by the charter<sup>11)</sup>. Mere inaction on the part of the state is, of course, so long as it continues, actually equivalent to a waiver, and in the case of merely technical or unimportant violations of the charter the state officials will usually decline to take any action; and they cannot, in the absence of statute, be compelled to act<sup>12)</sup>.

d) Proceedings to Secure a Forfeiture. — The statutes which declare what shall be causes of forfeiture usually prescribe the appropriate proceeding for annulling the corporate franchises<sup>13)</sup>. An information in the nature of a quo warranto, brought by the attorney general of the state in the name of the state, is the most common mode of procedure, and even in the absence of statute this is a proper proceeding<sup>14)</sup>. At common law *scire facias* is an alternative in cases of *de jure* corporations<sup>15)</sup>. The attorney general must act at the instance of the state, and not on behalf of private persons<sup>16)</sup>; nor can he be compelled by mandamus to act<sup>17)</sup>. But in some states statutes give private persons power to institute proceedings to secure a forfeiture<sup>18)</sup>.

e) Jurisdiction. — Proceedings to forfeit a charter at common law must be taken ordinarily in a court of law. Courts of equity have no jurisdiction to declare a forfeiture<sup>19)</sup> unless it is granted to them by statute; but this grant exists in some states<sup>20)</sup>. The courts of one state have no power to forfeit the charter of a corporation created by another state<sup>21)</sup>.

<sup>1)</sup> State v. Portland, etc., Co., (1899) 153 Ind. 483; Commonwealth v. Newport, etc., Co., (1906) 97 S. W. 375 (Ky.); State v. Armour Packing Co., (1903) 173 Mo. 356.

<sup>2)</sup> People v. Milk Exchange, (1892) 133 N. Y. 565; and cf. Chicago Life Ins. Co. v. Needles, (1885) 113 U. S. 574. But cf. Illinois Trust & Savings Bank v. Doud, (1900) 105 Fed. 123. — <sup>3)</sup> Smith v. St. Louis Mutual Life Ins. Co., (1877) 2 Tenn. Ch. 727. — <sup>4)</sup> Malone v. New York, etc., R. R., (1908) 89 N. E. 408 (Mass.); cf. Rice v. Natl. Bank, (1879) 126 Mass. 300; Pickett v. Abney, (1892) 84 Tex. 645. — <sup>5)</sup> Heard v. Talbot, (1856) 7 Gray 113. — <sup>6)</sup> State v. Goodwinsville, etc., Co., (1882) 44 N. J. L. 496; and see cases in note 12, infra. — <sup>7)</sup> Lumpkin v. Jones, (1846) 1 Ga. 27; Atchafalaya Bank v. Dawson, (1839) 13 La. 497. — <sup>8)</sup> Cf. Commonwealth v. Tenth Massachusetts Turnpike Co., (1850) 59 Mass. 509. — <sup>9)</sup> State v. Equitable Loan, etc., Assn., (1897) 142 Mo. 325; People v. Phoenix Bank, (1840) 24 Wend. 431. — <sup>10)</sup> People v. Ottawa, etc., Co., (1886) 115 Ill. 281; Farnsworth v. Line Rock, etc., R. R., (1891) 83 Me. 440. — <sup>11)</sup> State v. Bergen Neck Ry., (1890) 53 N. J. L. 108. — <sup>12)</sup> State v. Attorney General, (1878) 30 La. Ann. 954; State v. Paterson, etc., Turnpike Co., (1847) 21 N. J. L. 9. — <sup>13)</sup> Cf. VII, B, 2, a, note 3. — <sup>14)</sup> Morenci Copper Co. v. Freer, (1903) 127

Fed. 199; People v. Chicago Telephone Co., (1906) 220 Ill. 238; People v. American Loan & Trust Co., (1904) 177 N. Y. 467. — <sup>15)</sup> Washington, etc., Co. v. Maryland, (1865) 3 Wall. 210. — <sup>16)</sup> W. L. Wells Co. v. Gastonia Cotton Mfg. Co., (1905) 198 U. S. 177; State v. New Orleans Redemption Co., (1902) 107 La. 562; and cf. Attorney General v. Holly Shelter R. Co., (1904) 134 N. C. 481. — <sup>17)</sup> Vide supra, VII, B, 2, a, note 1. — <sup>18)</sup> Cal. Civ. Code, sec. 358 (creditors); Ill. Act of June 11, 1891 (prosecuting attorneys); La. R. S. 1870, sec. 688 (creditors); Mass. B. C. L., sec. 50 (tax commissioners or corporation commissioners); N. Y. G. C. L., secs. 101, 102 (creditors or shareholders); G. C. L., sec. 130 (legislature), and cf. secs. 131—135, 304; W. Va. Code, c. 53, sec. 57. Cf. State v. United States, etc., Co., (1904) 140 Ala. 610; Hunt v. Le Grand, etc., Rink Co., (1892) 143 Ill. 118. — <sup>19)</sup> Conklin v. United States Shipping Co., (1905) 140 Fed. 219. — <sup>20)</sup> Cf. Del. G. C. L., secs. 43, 44; Mass. B. C. L., sec. 50; N. J. cf. C. A., secs. 56, 57; W. Va. Code, c. 53, sec. 57. Cf. Jacobs v. Mexican Sugar Co., (1904) 130 Fed. 589; Wheeler v. Pullman, etc., Co., (1892) 143 Ill. 197; and cf. infra, VII, B, 3, c, and 4. — <sup>21)</sup> Republican Mountain Silver Mines v. Brown, (1893) 58 Fed. 644; Richardson v. Clinton Wall Trunk Mfg. Co., (1902) 181 Mass. 580.

3. VOLUNTARY SURRENDER OF THE CHARTER. — a) In General. A corporation may desire to abandon its enterprise and cease to exist, and at common law it may do so upon the surrender of its charter to the state and the acceptance by the state of the surrender<sup>1)</sup>. But both acts are necessary; a corporation cannot dissolve itself<sup>2)</sup>. A resolution of surrender by the shareholders is insufficient<sup>3)</sup>. Even in the case of a private business corporation, a mere cessation of business by the corporation does not thereby dissolve it; nor will the dissolution be effected by a sale or assignment of all the corporate property and its distribution to shareholders or creditors, coupled with the abandonment of the corporate business and the omission of all corporate meetings<sup>4)</sup>. The possession of property and the doing of business are not necessary to the existence of a corporation, and it could reacquire property and recommence business at any time until dissolved. But statutes permitting voluntary dissolution exist in every state to-day, and they obviate the necessity of consent on the part of the state<sup>5)</sup>. So also do statutes which authorize the transfer of the corporate property and franchises, including the franchise to be a corporation<sup>6)</sup>.

b) Who May Act for the Corporation in the Surrender of the Charter. — The directors cannot, without authorization from the shareholders surrender the corporate charter<sup>7)</sup>, and where the charter fixes the period of duration of the corporate existence it seems that at common law nothing less than the unanimous consent of the shareholders can authorize a surrender before that time<sup>8)</sup>. In the absence of such a fixing of the corporate duration, some courts have allowed a majority of the shareholders to make the surrender of the charter<sup>9)</sup>; and this is clearly within their power when the corporate enterprise can no longer be carried on with profit<sup>10)</sup>. In most statutes, moreover, permission is given to some proportion of the shareholders, most frequently those holding two thirds of the shares, to bind a dissenting minority, so long as the vote for dissolution is cast in good faith<sup>11)</sup>.

c) Statutory Provisions for Voluntary Dissolution. — The statutory provision for voluntary dissolution is exceptionally elaborate in its prescription of the necessary steps to effect it, and in its safeguarding of the creditors and others who might be injuriously affected<sup>12)</sup>. In general the statutes require action to be initiated by the directors, who, after themselves deciding on the advisability of a dissolution, must submit the question to a properly called meeting of shareholders. If the requisite number of assents are there obtained, application must be made to some officer or official body nominated by the statute to act on behalf of the state<sup>13)</sup>. Advertisement of the intention of the corporation to dissolve is required, and notice and hearing generally specially provided for those who may wish to oppose the surrender. If the surrender by the corporation is accepted, the officer being satisfied that no persons interested will be prejudiced, the corporate existence ceases. The fact of dissolution must be properly made a matter of public record. Individual statutes of course vary in detail from this general plan. Special provision is not infrequently made for

<sup>1)</sup> Taylor v. Holmes, (1882) 14 Fed. 498. — <sup>2)</sup> In North American, etc., Co., (1906) 99 Minn. 475; Attorney General v. Superior, etc., Ry., (1896) 93 Wis. 604. — <sup>3)</sup> Powell v. Oregonian Ry., (1889) 38 Fed. 187; Revere v. Boston, etc., Co., (1834) 32 Mass. 351. — <sup>4)</sup> Cresson & Clearfield Coal, etc., Co. v. Stauffer, (1906) 148 Fed. 981; Boston Glass Manufactory v. Langdon, (1834) 41 Mass. 49; Carnaghan v. Exporters', etc., Co., (1890) 11 N. Y. Supp. 172. — <sup>5)</sup> Crossman v. Vivivenda Water Co., (1907) 150 Cal. 575. — <sup>6)</sup> Snell v. City of Chicago, (1890) 133 Ill. 413; and cf. Stone v. Inhabitants of Farningham, (1872) 109 Mass. 303. — <sup>7)</sup> Cf. Jones v. Bank of Leadville, (1888) 10 Colo. 464. — <sup>8)</sup> Barton v. Enterprise Loan & Building Assn., (1887) 114 Ind. 226; Zabriskie v. Hackensack, etc., R. R., (1867) 18 N. J. Eq. 178. — <sup>9)</sup> Treadwell v. Salisbury Mfg. Co., (1856) 73 Mass. 393; and cf. Windmuller v. Standard Distilling, etc., Co., (1902) 114 Fed. 491; but cf. Black v.

Delaware, etc., Canal Co., (1871) 22 N. J. Eq. 403. — <sup>10)</sup> Price v. Helcomb, (1893) 89 Ia. 123; and vide supra, VI, D, 6, a. — <sup>11)</sup> Cf. Treadwell v. United, etc., Co., (1900) 62 N. Y. Supp. 708; Theis v. Spokane Falls Gas Light Co., (1904) 34 Wash. 23. — <sup>12)</sup> Cal. Code of Civil Procedure, secs. 1227—1233; Conn. P. A. 1903, c. 194, secs. 29—34, 72; Del. G. C. L., secs. 38—44, 47; Ill. G. C. L., secs. 50—52; Me. R. S., c. 47, secs. 80—83; Mass. B. C. L., secs. 51, 52, 55; Mich. Compiled Laws 1897, c. 300; Minn. R. L., secs. 2882, 3175, 3176; N. J. C. A., secs. 31, 32, 53—60; P. L. 1900, sec. 316; N. Y. B. C. L., sec. 5; G. C. L., secs. 35, 101—115, 170—195, 220—221; Pa. L. 1856, p. 293; L. 1872, p. 40; L. 1891, p. 15; Tex. Penal Laws, Acts 1907, p. 311, sec. 4 (3); W. Va. Code, c. 53, secs. 6, 56, 57, 59; Wis. S., secs. 1764, 1773, 1789; P. I. C. L., secs. 62—67. — <sup>13)</sup> Secretary of State in Del., N. J., Tex., W. Va., Wis.; local court in Cal., Conn., Me., Mass., Minn., N. Y., W. Va., P. I.

surrender of the corporate charter by vote of some specified majority of the shares before the completion of the corporate organization or the commencement of the corporate business<sup>1</sup>).

**4. INVOLUNTARY DISSOLUTION BROUGHT ABOUT BY CREDITORS OR SHAREHOLDERS.** — At common law, dissolution was brought about by direct action either of the state or of the corporation itself; but statutes are general to-day permitting a creditor or a shareholder, or a certain percentage of the entire body of creditors or shareholders, to procure in a proper case a decree of dissolution through the courts for the corporation<sup>2</sup>). The statutes usually provide that an application must be made to some specified court for the decree of dissolution, with a showing of grounds for the application, such as a violation by the corporate management of the charter of the corporation, or the insolvency of the corporation, and for the appointment of a receiver to wind up the corporate affairs.

**C. Effect of Dissolution.** — **1. IN GENERAL.** — Considerable confusion exists in the cases dealing with the effects of the dissolution of corporations, because of the hypothetical common law doctrine upon the subject. It has been deemed to be the common law that after dissolution, the corporation no longer being in existence for any purpose, its real property reverted to its grantors or donors, its personal property as *bona vacantia* fell to the state<sup>3</sup>). This doctrine was extended to debts due by or to the corporation. They were said by Blackstone to be totally extinguished by the dissolution<sup>4</sup>). Actions or proceedings by or against the corporation, commenced during its existence, abated upon its dissolution<sup>5</sup>).

It seems probable that this body of doctrine never did prevail in actual practice, at least as a consistently enforced whole<sup>6</sup>). In courts of equity<sup>7</sup>) and by statutory provision<sup>8</sup>), the rights of both creditors and shareholders have always received recognition. Effort will be made in the following sections to formulate the present status of these rights.

**2. ON THE POWERS OF THE CORPORATION.** — Upon dissolution of the corporation its representatives lose all right to act for it<sup>9</sup>). The corporation's powers and prerogatives cease<sup>10</sup>). It can no longer hold or convey property<sup>11</sup>), enter into a contract<sup>12</sup>), or exercise any of its franchises<sup>13</sup>). But statutes are usual which either continue the corporate existence or provide for the appointment of a trustee of the interests involved, for the purpose of exercising such corporate powers as are necessary to a proper winding up of the affairs of the defunct corporation.

**3. ON THE PROPERTY AND LIABILITIES OF THE CORPORATION.** — To-day, in the case of all private business corporations, all the property, both real and personal, which a corporation holds at the time of its dissolution, inclusive of those corporate franchises which have the nature of property<sup>14</sup>), constitute a fund which goes first to pay the corporate debts, and then, so far as any surplus remains, to be distributed among the shareholders in proportion to their holdings<sup>15</sup>). In the absence of statute the rights of the creditors and shareholders against the corporate estate will be enforced in equity<sup>16</sup>), but statutory provisions are usual<sup>17</sup>), and where

<sup>1</sup>) Conn. P. A. 1903, c. 194, sec. 72; Del. G. C. L., sec. 38; N. J. C. A., sec. 32; N. Y. G. C. L., secs. 170—171, 220; W. Va. Code, c. 53, sec. 6; Wis. S., sec. 1773. — <sup>2</sup>) Conn. P. A. 1903, c. 194, secs. 26—28, cf. 33; Del. G. C. L., sec. 19; Del. Laws, c. 181; Ill. G. C. L., sec. 25; La. Act 159 of 1898, secs. 1—10; Me. Public. Laws 1905, c. 85, secs. 1—7; Mass. cf. B. C. L., sec. 53, as amended by Laws of Mass. 1905, c. 156; Mich. Compiled Laws 1897, secs. 9755, 10852; Minn. cf. R. L., secs. 3173, 3178; N. J. C. A., secs. 65—66; N. Y. G. C. L., sec. 306 (1), (4); and cf. G. C. L., Art. XI; Tex. R. S., Art. 1465; G. L., Acts of 1907, p. 341, sec. 5; W. Va. Code, c. 53, sec. 58; Wis. cf. S., 2787. — <sup>3</sup>) Cf. Late Corporation of Church, etc., v. U. S., (1889) 136 U. S. 1; People v. Trustees of College, etc., (1870) 38 Cal. 166. — <sup>4</sup>) 1 Blackstone, Commentaries, p. 484; McRae v. Kansas City Piano Co., (1904) 69 Kas. 457. — <sup>5</sup>) Mumma v. Potomac Co., (1834) 8 Peters 281. — <sup>6</sup>) San Mateo County v. S. P. R. R., (1882) 8 Sawy.

238, 279; Huber v. Martin, (1906) 127 Mo. 412; Shayne v. Evening Post Publishing Co., (1901) 168 N. Y. 70. — <sup>7</sup>) Bacon v. Robertson, (1855) 18 How. 480; Sullivan Country R. Co. v. Connecticut River, etc., Co., (1904) 76 Conn. 464. — <sup>8</sup>) Vide infra, XI, 1, 2, and 3. — <sup>9</sup>) Cf. Greenwood v. Union Freight R. Co., (1881) 105 U. S. 13; Wilcox v. Continental, etc., Ins. Co., (1888) 56 Conn. 468. — <sup>10</sup>) Marysville Investment Co. v. Munson, (1890) 44 Kas. 491; International, etc., R. Co. v. State, (1889) 75 Tex. 356. — <sup>11</sup>) Bradley v. Reppell, (1896) 133 Mo. 545. — <sup>12</sup>) White v. Campbell, (1844) 5 Humph. 38 (Tenn.); State v. Louisiana, etc., Road Co., (Mo. App. 1906) 92 S. W. 153. — <sup>13</sup>) Campbell v. Talbot, (1882) 132 Mass. 474. — <sup>14</sup>) People v. O'Brien, (1888) 111 N. Y. 1. — <sup>15</sup>) Mason v. Pewabic Mining Co., (1894) 66 Fed. 391. — <sup>16</sup>) Bacon v. Robertson, (1855) 18 How. 480. — <sup>17</sup>) Vide infra, VII, D, 2, and 3.

a statute exists it is generally held to supersede the right to resort to equity<sup>1</sup>). Contracts<sup>2</sup>) and other obligations of the corporation<sup>3</sup>) do not cease by reason of dissolution; even where the contractee may not be able to get specific performance he has a right to damages from the estate<sup>4</sup>). The dissolution is not a discharge of the corporation's executory contracts so as to excuse performance<sup>5</sup>), unless the dissolution is the act of the state without fault on the part of the corporation<sup>6</sup>).

4. ON SUITS BY AND AGAINST THE CORPORATION. — Suits by and against the corporation at common law abate upon its dissolution<sup>7</sup>), unless the rule is changed by statute, and a judgment against the defunct corporation is void even though the suit was commenced before dissolution<sup>8</sup>). Here, however, equity granted a remedy to those having claims against the corporation; and statutes are general which provide that causes of action against the corporation shall not abate upon its dissolution, but may be availed of against those authorized to wind up its affairs.

**D. Winding up the Corporate Affairs after Dissolution.** — 1. IN GENERAL. — Under modern statutes provision is everywhere made for paying the debts of a dissolved corporation, disposing of its property, and in general winding up its affairs so as to protect as far as possible the rights of the creditors and shareholders<sup>9</sup>). The control of this process is committed by some statutes to the corporation itself, by some to its directors or officers, and by some to a receiver or trustee, appointed generally by the court that decreed the dissolution.

2. UNDER THE CONTROL OF THE CORPORATION OR ITS OFFICERS. — Statutes in a number of states continue for some specified period the existence of the corporation after the dissolution proceedings<sup>10</sup> for the purpose of winding up its affairs<sup>10</sup>). Under such a statute the corporation may exercise whatever powers are reasonably necessary for the collection of debts owed to the corporation<sup>11</sup>), and may make reasonable disposition of the assets of the corporation<sup>12</sup>), so long as those in control act with honest regard for the interests of all concerned in the distribution of these assets<sup>13</sup>). The corporation may bring and defend suits in the corporate name, so long as these acts are contributory to the purpose of winding up the corporate affairs<sup>14</sup>). Where the directors or other officers of the corporation are given the power to settle the corporate affairs after dissolution<sup>15</sup>), their powers and duties are usually fully set forth in the statutes, and in general are similar to those of the corporation as a whole under the preceding statutes.

3. WINDING UP BY A RECEIVER. — It may happen that the interests of the creditors or shareholders, or of some individual creditors or shareholders, may not receive proper consideration where the affairs of a corporation are to be wound up by the corporation itself or its managing officers. Hence, even in the absence of a statute, a court of equity may, on a proper showing of this situation, appoint a receiver to protect these interests<sup>16</sup>). But many states provide for the appointment of a receiver to wind up the affairs of a dissolved corporation, either in those cases where equity might act or generally<sup>17</sup>). The powers and duties of the receiver are

<sup>1</sup>) *Thornton v. Marginal Freight Co.*, (1877) 123 Mass. 32. — <sup>2</sup>) *Stannard v. Reed & Co.*, (1906) 99 N. Y. Supp. 567; *Griffith v. Blackwater, etc., Co.*, (1904) 55 W. Va. 604. — <sup>3</sup>) *Shayne v. Evening Post, etc., Co.*, (1901) 168 N. Y. 70; cf. *Hudson v. Limestone, etc., Co.*, (1904) 132 Fed. 410. — <sup>4</sup>) Cf. *Schleider v. Dielman*, (1892) 44 La. Ann. 462. — <sup>5</sup>) *Kalkhoff v. Nelson*, (1895) 60 Minn. 284; *Rosenbaum v. United States Credit, etc., Co.*, (1898) 61 N. J. Eq. 543. — <sup>6</sup>) *People v. Globe Mutual Life Ins. Co.*, (1883) 64 How. Pr. 240; affirmed 91 N. Y. 174. — <sup>7</sup>) *Mumma v. Potomac Co.*, (1834) 8 Peters 281; *Pendleton v. Russell*, (1891) 144 U. S. 645; *Olds v. City Trust, etc., Co.*, (1904) 185 Mass. 500. — <sup>8</sup>) *Sturges v. Vanderbilt*, (1878) 73 N. Y. 384. — <sup>9</sup>) Cf. *Minn. R. L.*, sec. 3177. — <sup>10</sup>) See VIII, notes 5 and 6. Cf. *Singer v. Hutchinson*, (1900) 83 Ill. App. 675; affirmed 183 Ill. 606. — <sup>11</sup>) *Mariners' Bank v. Sewall*, (1861) 50 Me. 220. — <sup>12</sup>) *Hanan v. Sage*, (1893) 58 Minn. 651. — <sup>13</sup>) *Mason*

*v. Pewabic Mining Co.*, (1890) 133 U. S. 50. — <sup>14</sup>) *Bewick v. Alpena, etc., Co.*, (1878) 39 Mich. 700. — <sup>15</sup>) *Conn. P. A.* 1903, c. 194, secs. 30—34; *Del. G. C. L.*, secs. 41, 42; *Ill. cf. G. C. L.*, sec. 52; *N. J. C. A.*, secs. 54, 55; and cf. secs. 56—59; *N. Y. G. C. L.*, sec. 35; *Tex. G. L.*, Acts of 1907, p. 310, sec. 4 (7); *W. Va. Code*, c. 53, sec. 59. — <sup>16</sup>) *Buckley v. Anderson*, (1903) 137 Ala. 325; and *vide supra*, VI, D, 7, and VIII, E. — <sup>17</sup>) *Cal. C. C. P.*, secs. 564—565; *Conn. P. A.* 1903, c. 194, secs. 26—28; *Del. G. C. L.*, sec. 43; *Ill. G. C. L.*, sec. 25; *La. Act* 26 of 1900, p. 32, and cf. Act 159 of 1898, p. 312; *Me. Pub. Laws* 1905, c. 85, sec. 2; *Mass. B. C. L.*, sec. 53, as amended by L. 1905, c. 156; *Mich. C. L.*, 1897, sec. 10852; *Minn. R. L.*, secs. 3173, 3178; *N. J. C. A.*, secs. 65, 66; *N. Y. G. C. L.*, sec. 306; *Pa. L.*, 1893, p. 26; *Tex. R. S.*, Art. 1465, and cf. *G. L.*, Acts 1907, p. 34, secs. 1—6; *W. Va. Code*, c. 53, sec. 58, and cf. c. 133; *Wis. S.*, secs. 2787, 3216, 3246.

generally defined by the statute under which he is appointed<sup>1</sup>). In some states he is invested with title to the corporate property<sup>2</sup>), and usually he has the right to take charge of this property, to collect debts owed to the corporation, settle its liabilities, and do all things necessary to winding up its affairs. Statutes also frequently prescribe the order in which he shall pay the various interests having a claim against the assets of the corporation<sup>3</sup>).

**VIII. EXTENSION OF CORPORATE EXISTENCE.** — When the existence of a corporation has a limit fixed for it by statute<sup>4</sup>), legislative authority is necessary to extend the corporate life beyond the time set<sup>5</sup>). Statutes provide in many states for such extension, either to enable the corporation to be wound up<sup>6</sup>) or to continue the corporate business<sup>7</sup>). If the business is continued under such statute the corporation is still the old corporation with its former rights and duties<sup>8</sup>). The corporation may in order to continue business obtain a new charter, but even this does not change its obligations or rights<sup>9</sup>), unless some substantial change is made in the constitution of the reincorporated company<sup>10</sup>).

**IX. SUCCESSION.** — Succession in corporations takes place through purchase, reorganization, or consolidation or merger. A corporation can succeed another corporation only by legislative authorization. The franchise of the earlier corporation to be a corporation cannot be otherwise transferred<sup>11</sup>). Purchasers of the property of a corporation, or of its secondary franchises, do not thereby obtain the right to be a corporation<sup>12</sup>). In case of the ordinary purchase and sale of corporate property, whatever the status of the purchasers may have been — corporate or individual — and whatever it may become by purchase, the status of the vendor corporation is unaltered by the mere fact of sale<sup>13</sup>). Statutes, however, may constitute of purchasers a corporation succeeding to the rights of the former one, or give them power to become a corporation with these rights, on compliance with certain specified conditions<sup>14</sup>). In the case of an authorized voluntary sale by one corporation of its property and franchises, the rights of the purchasers depend on the terms of the authorizing statute, as well as on their own charter powers and those of the vendor corporation<sup>15</sup>). If they are constituted a corporation to acquire the rights, franchises and powers of the vendor company, the new corporation succeeds to the rights, set forth in the constating instruments of the old company<sup>16</sup>).

<sup>1</sup>) Cal. C. C. P., sec. 565, and cf. sec. 568; Conn. Gen. Stats. 1902, sec. 1046; cf. Rules of Superior Court, secs. 53—59; Del. G. C. L., secs. 43, 52—56; Ill. G. C. L., sec. 25; La. Act 159 of 1898, p. 312, secs. 5—9; Me. Pub. Laws 1905, c. 85, sec. 3; R. S., c. 47, sec. 79; Mass. B. C. L., sec. 54; Minn. R. L., sec. 3178; N. J. C. A., secs. 66—82; N. Y. G. C. L., Arts. X, A and XI; Tex. R. S., Art. 1470; W. Va. cf. Code, c. 133. — <sup>2</sup>) N. J. C. A., sec. 68; N. Y. G. C. L., sec. 232, as amended by L. 1909, c. 240, sec. 41; Pa. cf. L. 1872, p. 46. — <sup>3</sup>) Conn. G. S. of 1902, sec. 1053; Del. G. C. L., secs. 57—58; Ill. Law of June 15, 1887, as amended by Laws 1895, p. 242, sec. 1; Me. R. S., c. 47, sec. 79; Mass. R. L., c. 150, sec. 29; Mich. C. L. 1897, secs. 9550, 9552; Minn. R. L., secs. 3173, 3190; N. J. C. A., secs. 83—86; N. Y. G. C. L., secs. 258—272; Tex. R. S., Art. 1472; W. Va. Code, c. 133, sec. 21; Wis. S., sec. 3245. — <sup>4</sup>) See II, F, 4. — <sup>5</sup>) People v. Pfister, (1881) 57 Cal. 532. — <sup>6</sup>) Del. G. C. L., sec. 40; Ill. G. C. L., sec. 10; Mass. B. C. L., sec. 52; Mich. C. L. 1897, sec. 8534; Minn. R. L., sec. 2863; N. J. C. A., sec. 53; N. Y. G. C. L., sec. 221; Pa. cf. L. 1881, p. 30; Tex. G. L., sec. 4, p. 310, Acts of 1907; W. Va. cf. Code, c. 53, sec. 59; Wis. S., sec. 1764; P. L., C. L. sec. 77. — <sup>7</sup>) Cal. Const., Art. XII, sec. 7, amended Nov. 3, 1908; Civ. Code, sec. 401, amended Mar. 18, 1907; Del. G. C. L., secs. 131—134; Ill. G. C. L.,

sec. 281<sup>1</sup>/<sub>2</sub>; Mich. C. A., sec. 33; P. A. 1905 No. 328; Minn. R. L., secs. 2856; N. J. P. L. 1897, p. 11; P. L. 1903, p. 391; N. Y. G. C. L., secs. 37, 38, 40, 41; Pa. Act of 1874, sec. 40; Tex. R. S., Art. 651, subd. 1; W. Va. Code, c. 54, sec. 11; amended 1901 Acts, 35; Code, c. 53, sec. 6. — <sup>8</sup>) Ovid Elevator Co. v. State Secretary, (1892) 90 Mich. 466; cf. People v. James, (1896) 39 N. Y. Supp. 313; Coal Creek Mining, etc., Co. v. Tennessee Coal, etc., Co., (1901) 106 Tenn. 651. — <sup>9</sup>) Park v. Mutual Reserve Fund, etc., Assn., (1905) 137 Fed. 273. — <sup>10</sup>) Cf. Commonwealth v. Building, etc., Assn., (1904) 118 Ky. 791. — <sup>11</sup>) Memphis, etc., R. Co. v. Railroad Commissioners, (1884) 112 U. S. 609. — <sup>12</sup>) Southern Can & Foundry Co. v. Calhoun Co., (1904) 141 Ala. 250. — <sup>13</sup>) Price v. Holcomb, (1893) 89 Ia. 123; Sewell v. East Cape May Beach Co., (1893) 50 N. J. Eq. 717. — <sup>14</sup>) Del. G. C. L., sec. 65; N. J. cf. P. L. 1897, p. 229; P. L. 1899, p. 334; N. Y. S. C. L., secs. 9—11; Pa. L. 1887, p. 278 (cf. p. 276); L. 1878, p. 145, as amended by L. 1909, p. 175; L. 1878, p. 145 (3); Wis. S. cf. sec. 1788; L. 1899; cf. Commonwealth v. Keystone, etc., Co., (1899) 193 Pa. St. 245. Carolina Coal & Ice Co. v. Southern R. Co., (1907) 144 N. C. 732. — <sup>15</sup>) Cf. State v. Hare, (1889) 121 Ind. 308; Del. v. Division Canal Co., (1865) 50 Pa. St. 399. — <sup>16</sup>) Cf. State v. Sherman, (1892) 22 Ohio St. 428.



**A. Reorganization.** — Statutory provision is most frequently made to permit purchasers of corporate property and franchises under judicial and foreclosure sales to form a new corporation with the rights and powers of the old corporation, but relieved of its liabilities<sup>1</sup>). Unless the statute is intended by the legislature to be exclusive the purchasers can choose whether they will avail themselves of it or organize a new corporation under general laws<sup>2</sup>).

**B. Consolidation of Corporations.** — 1. IN GENERAL. — In the case of business corporations the usual method of combining corporations is by purchase of the properties, or the properties and franchises of one by another<sup>3</sup>). Less frequently, and generally in the case of business corporations having a quasi-public nature, a consolidation has been effected. A consolidation has been defined as "a merger, a union, or amalgamation, by which the stock of the two companies is made one, by which their property and franchises are combined into one, by which their powers become the powers of one, by which the names are merged into one, and by which the identity of the two, practically if not actually, runs into one"<sup>4</sup>). The actual legal effects, however of any consolidation will depend on the particular statute under which it took place, and the terms of the agreement under which it was effected. Where one corporation absorbs another, itself continuing in existence, the term merger is more appropriate<sup>5</sup>).

2. POWER TO CONSOLIDATE. — Most modern corporation laws give corporations power, by compliance with certain conditions, to effect consolidations<sup>6</sup>), but some limit the power to corporations carrying on business of the same or similar nature<sup>7</sup>). On the other hand, some consolidations are usually positively forbidden, and a common prohibition is that against the consolidation or merger of competing corporations<sup>8</sup>). Legislative authority is necessary to any consolidation<sup>9</sup>), and probably each of the corporations seeking a consolidation must have such legislative authorization from the state under whose laws it was created<sup>10</sup>). By most general statutes the power to consolidate is conferred on all corporations organized under them. The statutes generally prescribe with some particularity the steps to be taken to bring about a valid consolidation, and the statutory requirements must be substantially complied with<sup>11</sup>). The terms under which the consolidation will take place — i. e. the details as to the value at which the property of the constituent corporations shall be turned over to the consolidated company, and such matters — are formulated by an agreement between the different boards of directors. The detailed plan must then be submitted to a meeting of the shareholders called for the purpose of considering the matter, and upon proper notice. If the required number of assents to the scheme is obtained—a number ranging under the statutes from a majority to two-thirds of the shares—the consolidation must be properly advertised, and a certificate, setting forth its terms and generally required to be signed by the board of directors of the original corporations or a majority of them, must be filed with the secretary of state or other designated public officer, and made a matter of public record and approved by him. A certificate of his approval, properly signed and sealed and sent to the new corporation, completes and furnishes evidence of the consolidation. If there is a valid law authorizing a consolidation, a consolidated corporation *de facto* may be created in the same way as a corporation *de facto* might be created originally<sup>12</sup>).

3. EFFECTS OF CONSOLIDATION. — a) On the Constituent Companies. — Whether the original corporations all disappear and an entirely new one is formed

<sup>1</sup>) Conn. P. A. 1903, c. 194, sec. 27; Del. cf. G. C. L., sec. 65; N. J. cf. P. L. 1897, p. 229; N. Y. cf. S. C. L., secs. 9—11; Pa. cf. L. 1887, p. 278 (cf. p. 276); L. 1878, p. 145, as amended by L. 1909, p. 175; L. 1878, p. 145 (3); Wis. S., sec. 1788; L. 1899. Cf. Cooper v. Utah, etc., Co., (1909) 102 Pac. 202. — <sup>2</sup>) Jeffrey v. Moran, (1879) 101 U. S. 285. — <sup>3</sup>) For the distinction between sale and consolidation see Compton v. Wabash, etc., R. Co., (1888) 45 Ohio St. 615. — <sup>4</sup>) State v. Montana R. Co., (1898) 21 Mont. 242. — <sup>5</sup>) Cf. N. Y. S. C. L. § 15. — <sup>6</sup>) Cal. Civ. Code, sec. 587a, added by Act of March 21, 1905; Conn. P. A. 1903, c. 194, secs. 76, 77, 79; Del. G. C. L., secs. 59, 61, 64; Ill. Act of March 26, 1872, as amended

July 1, 1903, secs. 1—5; La. cf. Act No. 74 of 1902, p. 101, and Act No. 158 of 1874 (Acts of 1875, p. 18); Mass. cf. B. C. L., secs. 40, 41, 44; N. J. C. A., secs. 104—109; N. Y. B. C. L., secs. 7—11; Pa. L. 1901, p. 349, secs. 2—5; L. 1905, p. 95. — <sup>7</sup>) Colgate v. United States Leather Co., (1907) 73 N. J. Eq. 72. — <sup>8</sup>) Vide infra, XVI. — <sup>9</sup>) Kavanaugh v. Omaha Life Assn., (1897) 84 Fed. 295. — <sup>10</sup>) Louisville, etc., R. Co. v. Kentucky, (1896) 161 U. S. 691. — <sup>11</sup>) People v. Chambers, (1871) 42 Cal. 201; W. Scheidel Coil Co. v. Rose, (1909) 242 Ill. 484. — <sup>12</sup>) Toledo, etc., R. Co. v. Continental Trust Co., (1899) 95 Fed. 497.



by the consolidation depends on the terms of the statute<sup>1</sup>). Ordinarily a new corporation is created, and the old ones thereby dissolved<sup>2</sup>). The shareholders of the constituent companies, under the usual statutes, become shareholders of the new corporation<sup>3</sup>). In the case of a merger proper, however, only the absorbed corporation is dissolved<sup>4</sup>), even when the name of the original corporation remaining is changed<sup>5</sup>). The constituent corporations are sometimes continued as separate entities from the resultant corporation, for the purpose of winding up their affairs<sup>6</sup>). Where the original corporations are dissolved, their creditors have no action at law against them, but only in equity against the assets of the dissolved corporation<sup>7</sup>). They may therefore lose their rights to these assets in the hands of the new corporation by laches of the intervention of the rights of innocent third parties<sup>8</sup>). But in the cases where the constituent corporations are not dissolved, or are continued for the purpose of the winding up of their affairs, creditors' rights against them are unimpaired.

b) On the Rights and Obligations of the Resultant Company. — In general the resultant company succeeds, except so far as it is limited by the provisions of the statute authorizing the consolidation<sup>9</sup>), and by the terms of the particular agreement under which the consolidation was effected, to all the rights, duties, obligations, and liabilities of the constituent corporations<sup>10</sup>). Usually the statutes expressly provide that the new corporation shall assume the liabilities of the old<sup>11</sup>). Its obligations as a new, distinct corporation, however, are determined by the laws in force at the time of its creation rather than by those existing when its constituent companies were created<sup>12</sup>). As successor to the original corporations it may enforce contract rights they possessed<sup>13</sup>); and is liable on their obligations<sup>14</sup>), except where the legislature has provided otherwise<sup>15</sup>). The legislature, however, cannot deprive the creditors of the constituent corporations of their rights against the assets of these corporations<sup>16</sup>). The new corporation takes these assets subject to all liens on the property<sup>17</sup>), and to the equitable rights of creditors against it<sup>18</sup>). It is not infrequent under statutes that the corporation shall be further liable beyond the claims against the property it has received<sup>19</sup>). But even in the absence of such provision it is held by the weight of authority that the consolidated corporation, in taking the property of its constituent corporations, impliedly assumes their contract liabilities<sup>20</sup>) and also their tort liabilities<sup>21</sup>). The right of action against the new corporation may be sued upon at law<sup>22</sup>) as well as in equity<sup>23</sup>).

4. QUASI-CONSOLIDATION. — a) Sale of Property for Shares in Second Corporation. — The business advantages of mergers and consolidations may often be obtained in whole or in part without following the legislatively prescribed methods<sup>24</sup>). Thus a corporation may, if it has charter authority to dispose of all its property, exchange this property for shares in a second corporation, to be distributed among

<sup>1</sup>) Cf. Del. G. C. L., sec. 60; N. J. C. A., secs. 104, 106, 107; Succession of Hutchinson (1904) 112 La. 656; People v. New York, etc., R. Co., (1892) 129 N. Y. 474, 482. — <sup>2</sup>) Fee v. New Orleans Gas Light Co., (1883) 35 La. Ann. 413. — <sup>3</sup>) People v. New York, etc., R. Co., supra; cf. Isom v. Rex Crude Oil Co., (1905) 147 Cal. 663; Cleveland, etc., Co. v. Roebuck, (1901) 22 Ohio Circ. Ct. 99. — <sup>4</sup>) Cf. Central R. & Banking Co. v. Georgia, (1875) 92 U. S. 665. — <sup>5</sup>) Meyer v. Johnston, (1875) 64 Ala. 603. — <sup>6</sup>) Edison Electric Co. v. New Haven Electric Co., (1888) 35 Fed. 233. — <sup>7</sup>) People v. Empire Mutual Life Ins. Co., (1883) 92 N. Y. 105. — <sup>8</sup>) McMahon v. Morrison, (1861) 16 Ind. 172. — <sup>9</sup>) State v. Maine Central R. Co., (1878) 66 Me. 488. — <sup>10</sup>) Tomlinson v. Branch, (1872) 15 Wall. 460; Tennessee v. Whitworth, (1886) 117 U. S. 139, 147. — <sup>11</sup>) Cal. Civ. Code, sec. 587a; Conn. P. A. 1903, c. 194, sec. 78; Del. G. C. L., secs. 60, 63; Ill. Act of March 9, 1867; N. J. C. A., sec. 107; N. Y. B. C. L., secs. 9, 10; Pa. L. 1901, p. 349, sec. 3; L. 1905, p. 95; and cf. John Hancock Mutual Life Ins. Co. v. Worcester, etc., Co., (1889) 149 Mass. 214. — <sup>12</sup>) Shields v. Ohio,

(1877) 95 U. S. 319. — <sup>13</sup>) Birmingham Light & Power Co. v. Enslin, (1905) 144 Ala. 343; In re Trenton Street Ry. Co., (1900) 47 Atl. 819 (N. J.). — <sup>14</sup>) Cf. Indianapolis, etc., R. Co. v. Jones, (1868) 29 Ind. 465. — <sup>15</sup>) Cf. Whipple v. Union Pacific Ry. Co., (1882) 28 Kans. 474. — <sup>16</sup>) Market Street Ry. Co. v. Hellman, (1895) 109 Cal. 571. — <sup>17</sup>) Central R. & Banking Co. v. Georgia, (1875) 92 U. S. 665; United Mines Co. v. Hatcher, (1897) 79 Fed. 517. — <sup>18</sup>) Central Electric Co. v. Sprague Electric Co., (1902) 120 Fed. 925. — <sup>19</sup>) Cf. Franklin Life Ins. Co. v. Hickson, (1902) 197 Ill. 117. — <sup>20</sup>) Continental Trust Co. v. Toledo, etc., R. Co., (1898) 86 Fed. 929. — <sup>21</sup>) Birmingham Light & Power Co. v. Enslin, (1905) 144 Ala. 343; Indianapolis, etc., R. Co. v. Jones, (1868) 29 Ind. 465; Palmer v. Chicago, etc., R. Co., (1909) 121 S. W. 1087 (Mo. App.). — <sup>22</sup>) Morrison v. American Snuff Co., (1901) 30 So. 723. — <sup>23</sup>) Harrison v. Arkansas Valley Ry. Co., (1882) 13 Fed. 522. — <sup>24</sup>) Cf. Hiles v. Hiles, (1905) 120 Ill. App. 617; Louisville, etc., R. Co. v. Hughes, (Ga. 1910) 67 S. E. 542.

the shareholders of the first corporation<sup>1</sup>). Even without charter authority, such a transfer of property for shares, if consented to by all the shareholders of the selling corporation, would be valid in the case of private business corporations<sup>2</sup>). Even if some shareholders dissent, satisfactory provision can be made for paying them in cash rather than in stock<sup>3</sup>). Provision is sometimes made in statutes for buying out dissenting minority holders at the appraised value of their shares<sup>4</sup>). In any of these cases, when the rights of the shareholders of the vendor corporation are adjusted the second corporation succeeds to its business, and a practical consolidation is thus effected. The same result is achieved by a lease of the property of the first corporation to the second<sup>5</sup>). In neither of these cases is the corporation dissolved; for the transfer of its property does not ipso facto dissolve a corporation, and it is still liable to its creditors<sup>6</sup>).

b) Acquisition by One Corporation of Shares in a Second Corporation. — 1. *Holding Companies*. — Where a corporation has power to hold shares in other corporations<sup>7</sup>) it can, by acquiring a majority of their shares, practically control such other corporations as it wishes to combine with it. Such combination is not per se invalid, so long as it does not result in a control inimical to the best interests of the subordinated corporations<sup>8</sup>). A further extension of this method of securing control over other corporations is the so-called "holding company", a corporation organized for the sole purpose of acquiring and holding shares in other corporations in order to bring about harmony of business policy among them. Such a corporation, organized in a state in which corporations are permitted to acquire and hold shares in other corporations, is not illegal<sup>9</sup>), unless by its conduct or the character of the corporations it brings under a common control it renders itself obnoxious to the common law prohibitions against monopoly, or to the terms of some statute<sup>10</sup>).

2. *Other Forms*. — Less closely knit combinations of corporations<sup>11</sup>) are formed by so-called friendly agreements between corporations engaged in the same line of business to operate in some measure of harmony, for example as to prices for their commodities<sup>12</sup>) or the territory in which they shall operate<sup>13</sup>). Efforts to prevent such of these combinations as tend unduly to restrain competition, by means of anti-trust statutes, state and federal, are discussed later<sup>14</sup>).

**X. ACTIONS BY AND AGAINST CORPORATIONS. — A. In General.** — Even in the absence of an express grant of the power to corporations, they have at common law implied power to sue and may be sued in any court. Statutory and constitutional provisions, however, are universal, declaratory of the right, and generally granting the corporation power to maintain or defend suits in the corporate name<sup>15</sup>). The power to sue and the liability to be sued alike continue until dissolution, and by statute frequently beyond that time<sup>16</sup>). A mere suspension of the corporate business<sup>17</sup>), or insolvency of the corporation<sup>18</sup>), do not affect the power or the liability. A corporation, moreover, is entitled as plaintiff and liable as defendant to such statutory

<sup>1</sup>) Cf. III, C, 4; *Farmers', etc., Co. v. Toledo, etc., R. R.*, (1893) 54 Fed. 759; and cf. *Metcalf v. American, etc., Co.*, (1903) 122 Fed. 115; *Germer v. Triple State, etc., Co.*, (1906) 60 W. Va. 143. — <sup>2</sup>) *Leathers v. Janney*, (1889) 41 La. Ann. 1120; and cf. *Holmes, etc., Mfg. Co. v. Holmes, etc., Meta-Co.*, (1891) 127 N. Y. 252. — <sup>3</sup>) *Feld v. Road noke Investment Co.*, (1894) 123 Mo. 603; cf. *Francis v. Taylor*, (1900) 65 N. Y. Supp. 28; and *Pitcher v. Lone Pine-Surprise, etc., Co.*, (1905) 30 Wash. 602; and cf. *Morris v. Elyton Land, etc., Co.*, (1900) 125 Ala. 263. — <sup>4</sup>) *Conn. P. A.* 1903, c. 194, sec. 79; *Del. G. C. L.*, sec. 61; *N. J. C. A.*, sec. 108; *N. Y. B. C. L.*, sec. 8; *Pa. L.* 1901, p. 349, sec. 5; and cf. *Dickinson v. Consolidated, etc., Co.*, (1902) 114 Fed. 232. — <sup>5</sup>) *Vide supra*, III, C, 4. — <sup>6</sup>) *Cresson & Clearfield Co. v. Stauffer*, (1906) 148 Fed. 981; and cf. VII, B, 3, and VII, C. — <sup>7</sup>) *Vide supra*, III, C, 2. — <sup>8</sup>) *Vide supra*, VI, D, 6. — <sup>9</sup>) *United States v. E. C. Knight Co.*, (1895) 156 U. S. 1; cf. *United States v. Addyston*

*Pipe Co.*, (1898) 85 Fed. 271. — <sup>10</sup>) *Northern Securities Co. v. United States* (1904) 193 U. S. 197; and *vide infra*, XVI. — <sup>11</sup>) *Vide supra*, III, C, 7. — <sup>12</sup>) *Addyston Pipe & Steel Co. v. United States*, (1899) 175 U. S. 211. — <sup>13</sup>) Cf. *Swift & Co. v. United States*, (1905) 196 U. S. 375. — <sup>14</sup>) *Vide infra*, XVI. — <sup>15</sup>) *Cal. Const.*, Art. XII, sec. 4; *Conn. P. A.* 1903, c. 194, sec. 3; *Del. G. C. L.*, sec. 2; *Ill. G. C. L.*, secs. 5, 10, 11; *La. R. S.* 1870, secs. 684, 685; *Me. R. S.*, c. 47, sec. 46; *Mass. B. C. L.*, sec. 4b; *Mich. Const.*, Art. XII, sec. 2; *Minn. R. L.*, secs. 2852, 3169; *N. J. C. A.*, sec. 1 (2); *N. Y. Const.*, Art. VIII, sec. 3; *Pa. Act of 1874*, sec. 1 (2); *Tex. R. S.*, Art. 561; *W. Va.*, Code, c. 52, sec. 1; *Wis. S.*, secs. 1775 (2), 1770; *P. I. C. L.*, sec. 13 (2). — <sup>16</sup>) *Vide supra*, VIII. — <sup>17</sup>) *Saugatuck Bridge Co. v. Town of Westport*, (1872) 39 Conn. 337. — <sup>18</sup>) *Central Natl. Bank, etc., v. Connecticut Mutual Life Ins. Co.*, (1881) 104 U. S. 54.

remedies as attachment<sup>1)</sup> and garnishment<sup>2)</sup>, even though special mention of corporations is not made in the statute, unless the clear intention of the language is to exclude corporations.

**B. Statutory Regulations as to Suits: Service of Process, etc.** — The method of service of process upon a corporation is usually prescribed with care by statutes<sup>3)</sup>, and sometimes the method of bringing suit<sup>4)</sup>, and the proper venue for suits, are specified<sup>5)</sup>.

**C. Proof of Incorporation.** — 1. IN GENERAL. — When an action is brought by or against a corporation, the corporate existence of the body must be alleged<sup>6)</sup>, and if the allegation is put in issue<sup>7)</sup> must be proved<sup>8)</sup>, or an estoppel shown against the one seeking to dispute it<sup>9)</sup>. Similarly, if an association sued as a partnership or as individuals claims to be a corporation, and the fact of incorporation is put in issue, it must be proved<sup>10)</sup>. It is usually sufficient to prove a de facto corporate existence<sup>11)</sup>, but in the case of a direct proceeding by the state to oust the associates from the exercise of the powers of a corporation they must, of course, show a de jure existence.

2. EVIDENCE TO PROVE INCORPORATION. — a) Direct Evidence. — It is generally provided by statute that the certificate of incorporation issued by the secretary of state or other officer of similar function is evidence of incorporation<sup>12)</sup>, generally specified to be prima facie but in some states conclusive<sup>13)</sup>. But in default of power to introduce such evidence, the production of the incorporation paper itself<sup>14)</sup>, or a certified copy thereof<sup>15)</sup>, if coupled with evidence of compliance with the requirements of the incorporation law by the association<sup>16)</sup>, will take its place.

b) Indirect Evidence. — Indirect evidence of incorporation is also admissible<sup>17)</sup>. Evidence of a long-time user of corporate powers, coupled with an assertion of corporate existence, will raise a prima facie case of incorporation<sup>18)</sup>. Even the use of a name which ordinarily denotes corporate existence has been held to be evidence of the corporate character on the part of the association using it<sup>19)</sup>. Statutory recognition of the corporate character of an association originally defectively incorporated will dispense with other proof of incorporation<sup>20)</sup>. So also a previous recognition of the corporate character of the association by the party now disputing it will be prima facie proof of incorporation as against him<sup>21)</sup>. Such admission may be by a contract with the corporation<sup>22)</sup>.

1) Cf. Me. R. S., c. 47, secs. 71—74; Mich. C. A., sec. 32; N. J. cf. C. A., secs. 69, 92; N. Y. Code of Civ. Procedure, secs. 635, 636; Pa. L. 1903, p. 139. Knox v. Protection Ins. Co., (1833) 9 Conn. 430. — 2) Cf. Mich. Pub. Acts, 1899, p. 414; W. Va. Code, c. 52, sec. 19. — 3) Cal. Code of Civ. Procedure, sec. 411; Conn. Gen. Stats. 1902, secs. 571, 572, 886—887; Del. G. C. L., sec. 48; Ill. Act of June 3, 1907, sec. 8; La. Act No. 261 of 1908; Me. R. S., c. 83, secs. 19, 20, 70; Mass. R. L., c. 167, secs. 7, 36; Mich. C. A., sec. 30; Minn. R. L., sec. 3169; N. J. C. A., sec. 87; G. S., p. 2551; P. L. 1908, p. 181; P. L. 1906, p. 48; C. A., secs. 89—91; N. Y. Code of Civ. Procedure, c. 431, secs. 1775—1777; Pa. L. 1862, p. 449; L. 1903, p. 139; Tex. R. S., Art. 1222, as amended Act 1903, p. 66; W. Va. Code, secs. 18, 61; Wis. S., sec. 2637; L. 1909, c. 451. — 4) Cf. Cal. Civ. Code, sec. 299; Mass. R. L., c. 167, sec. 7. — 5) Cal. Const., Art. XII, sec. 16; La. Act 41 of 1855. — 6) Cf. Mathieson Alkali Works v. Mathieson, (1906) 150 Fed. 241; Los Angeles R. Co. v. Davis, (1905) 146 Cal. 179; Franklin Union No. 4 v. People, (1906) 220 Ill. 355. — 7) Society, etc., v. Town of Pawlet, (1830) 4 Pet. 480; Emerson Co. v. Nimmoicks, (1898) 88 Fed. 280. — 8) Bushnell v. Consolidated Ice Machine Co., (1891) 138 Ill. 67. — 9) Vide infra, N. C. 3. — 10) Owen v. Shepard, (1894) 59 Fed. 746; Williams v. Hewitt, (1895) 47 La. Ann. 1076. — 11) Vide supra, 11, 1, 2. — 12) Cal. Civ. Code, secs. 297, 297a; Conn. P. A. 1903, c. 194, sec. 65; Del. G. C. L., sec. 6; Ill. G. C. L., sec. 27; La. Act No. 149 of 1898, sec. 4; Me. cf. R. S., c. 47, sec. 8; Mass. B. C. L., sec. 12; Mich. cf. C. A., sec. 7; Minn. R. L., sec. 2874; N. J. C. A., sec. 9; N. Y. G. C. L., sec. 9; Code of Civ. Procedure, sec. 933; Pa. Act of 1874, sec. 3; Tex. R. S., Arts. 645, 677; R. S., Arts. 2306, 2308; W. Va. Code, c. 54, sec. 10, amended 1901 Acts, 35; c. 54, sec. 19, amended 1903 Acts, 5; Wis. cf. S., sec. 1772; P. I. C. L., sec. 10. — 13) Cf. Mass., note 12, supra. — 14) Sierra Land, etc., Co. v. Bricker, (1906) 3 Cal. App. 190; Fortin v. United States, etc., Pump Co., (1868) 48 Ill. 451. — 15) Fresno Canal, etc., Co. v. Warner, (1887) 72 Cal. 379; Tapley v. Martin (1874) 116 Mass. 275. — 16) Cf. Wood v. Wiley Construction Co., (1888) 56 Conn. 87. — 17) Galbraith v. Shasta Iron Co., (1904) 143 Cal. 94; Stanford Land Co. v. Steedle, (1902) 28 Wash. 72. — 18) Rosehill, etc., Co. v. People, (1885) 115 Ill. 133; cf. McKenney v. Bowie, (1900) 94 Me. 397. — 19) Williamsburg, etc., Ins. Co. v. Frothingham, (1877) 122 Mass. 391; Stoutimore v. Clark, (1875) 70 Mo. 142; contra, Briggs v. McCullough (1869) 36 Cal. 542. — 20) Koch v. North Ave. Ry. Co., (1892) 75 Md. 222. — 21) Marx v. Raley & Co., (1907) 6 Cal. App. 479; Standard Oil Co. v. Commonwealth, (1906) 91 S. W. 1128 (Ky.). — 22) Sierra Land, etc., Co. v. Bricker, (1906) 3 Cal. App. 190; Anglo-Californian Bank v. Field, (1905) 146 Cal. 644.

3. **ESTOPPEL TO DENY INCORPORATION.** — An association may be estopped to deny its own corporate existence, if it has led persons to deal with it as a corporation to their detriment, as by representations of its corporate character<sup>1)</sup>; and persons who have participated in acts done by the association as incorporated, or otherwise acted so as to lead other parties to act in reliance on the corporate character of the association, will be estopped to dispute this character<sup>2)</sup>.

**XI. RIGHTS OF CREDITORS OF A CORPORATION.** — **A. In General.** — The liabilities of a corporation to its creditors are the same as those of any other legal person under similar circumstances. A corporation is liable, like a natural person, in law or equity, and its creditors have the same rights and remedies as they would have against a natural person<sup>3)</sup>. On the other hand, they have no more control over its management of its business and disposition of its property than they would have in the case of an individual debtor. They cannot enjoin it from acting in a way they think unwise<sup>4)</sup> or even *ultra vires*<sup>5)</sup>, nor are their rights, in the absence of statute, increased by the mere fact that the corporation is insolvent<sup>6)</sup>. If they believe that the security for their debt is being threatened by the conduct of the corporate business, they may sue on their claim if it is matured<sup>7)</sup>, and reduce it to judgment, and the remedies of attachment and execution are open to them in a proper case against a corporation, just as they would be against an individual<sup>8)</sup>. If they obtain, in this or other ways, an interest in specific corporate property, they can attack a wrongful disposition of it<sup>9)</sup>. The peculiar features of the law of corporation creditors arise out of the special rights these creditors possess against the managers and shareholders of the corporation because of the relation these latter bear to the corporate entity.

**B. Rights against Transferees of Corporate Property.** — **1. TRANSFERS TO THIRD PARTIES.** — As has just been said, a general, unsecured creditor has no right to any specific property of the corporation. As the United States Supreme Court said in the leading case of *Hollins v. Brierfield Coal, &c. Co.*<sup>10)</sup>, "Neither the insolvency of a corporation nor the execution of an illegal trust deed, nor failure to collect in full all stock subscriptions, nor all together give a simple contract creditor of the corporation any lien on its property, or charge any direct trust thereon." If the unsecured creditor is refused payment of a matured claim he may, by an action at law or in equity, obtain a judgment in his favor and issue a writ of execution to subject the assets of the corporation to the satisfaction of his judgment. In the case of private business corporations, all the property of the corporation except that already made into security for other creditors may be subjected to the judgment creditor's claim. If his execution is returned unsatisfied he has exhausted his remedies, unless he can show that the corporation has disposed of its property with the intention of depriving its creditors of satisfaction of their claims or of hindering or delaying them in this satisfaction<sup>11)</sup>. If it can be shown that the transferee has received corporate property without consideration<sup>12)</sup>, or with intent to aid in the fraudulent act of the corporation, the judgment creditor may subject the property in his hands to the satisfaction of his claims<sup>13)</sup>. If, however, the transferee is a bona fide purchaser of the property without knowledge of the fraud, the property cannot be taken from him by a creditor<sup>14)</sup>.

**2. TRANSFERS TO DIRECTORS OR SHAREHOLDERS.** — If the transferee is a director or officer of the corporation itself, and the transfer is made after the corporation is actually insolvent, or made to him in contemplation of insolvency, the director is, by the weight of authority, not a bona fide purchaser, and the judg-

<sup>1)</sup> *Slocum v. Warren*, (1871) 10 R. I. 116; *Tanner v. Nichols*, (1894) 80 S. W. 225 (Ky.). — <sup>2)</sup> *Snyder v. Studebaker*, (1862) 19 Ind. 462; *Camp v. Byrne*, (1867) 41 Mo. 525; and cf. *supra*, II, I, 4. — <sup>3)</sup> *Vide supra*, II, B. — <sup>4)</sup> Cf. *Hollins v. Brierfield Coal, etc., Co.*, (1893) 150 U. S. 371. — <sup>5)</sup> Cf. *Force v. Age-Herald Co.*, (1903) 136 Ala. 271; and cf. *Streight v. Junk*, (1893) 59 Fed. 321. — <sup>6)</sup> *Chattanooga, etc., R. R. v. Evans*, (1895) 66 Fed. 809; *Pond v. Framingham, etc., R. Co.*, (1881) 130 Mass. 194. — <sup>7)</sup> Cf. *Wightman v. Evanston, etc., Co.*, (1905) 217 Ill. 371. — <sup>8)</sup> *Vide supra*, X, A and B. — <sup>9)</sup> *McKee v. City*

*Garbage Co.*, (1905) 140 Mich. 497. — <sup>10)</sup> *Hollins v. Brierfield Coal, etc., Co.*, *supra*; and cf. *Kittell v. Augusta, etc., R. R.*, (1895) 65 Fed. 859; *Atlas Bank v. Moran, etc., Co.*, (1897) 138 Mo. 59. — <sup>11)</sup> Cf. article on Sales, *supra*. — <sup>12)</sup> *Natl. Trust Co. v. Miller*, (1880) 33 N. J. Eq. 155; *South Bend, etc., Co. v. George C. Cribb Co.*, (1900) 105 Wis. 443. — <sup>13)</sup> *Hurd v. New York, etc., Laundry Co.*, (1901) 167 N. Y. 89; cf. *Carstens & Earles, Inc., v. Hofius*, (1906) 44 Wash. 456. — <sup>14)</sup> *Hagemann v. Southern, etc., R. R.*, (1907) 100 S. W. 1081 (Mo.); *Houston, etc., Co. v. Nicolini*, (1906) 96 S. W. 84 (Tex.).

ment creditor can follow the property into his hands and subject it to the satisfaction of the creditor's judgment<sup>1</sup>). Also, if the corporate shareholders withdraw assets of the corporation, — whether directly by a distribution among themselves<sup>2</sup>), or indirectly in the guise of dividends which are really made from the capital<sup>3</sup>) or by decreasing the outstanding capital without legal authority by paying for shares from the assets of the corporation<sup>4</sup>), or by transferring the assets to a new corporation in which they are the sole or principal shareholders<sup>5</sup>), — these shareholders are not *bonâ fide* purchasers; and judgment creditors can recover the fraudulently transferred assets for the satisfaction of their claims.

3. WHAT CREDITORS CAN OBJECT TO TRANSFERS. — Only creditors who were such at the time of the transfer can object to any transfer of a corporation's property. Subsequent creditors have not been injured; for they have given credit only upon the basis of the corporation's present financial ability<sup>6</sup>).

C. *Insolvency as affecting the Rights of Creditors.* — 1. *ASSIGNMENTS FOR CREDITORS.* — a) Power to make. — In the absence of charter or statutory restrictions, a corporation in failing circumstances may make an assignment of all its property for the benefit of creditors<sup>7</sup>). This may be done by directors even without the consent of shareholders, as it is a part of the directors' duty to provide for the payment of the corporate debts<sup>8</sup>). In some cases, however, a statute or charter provision reserves this right to the shareholders<sup>9</sup>). Even in such a case, subsequent acquiescence or ratification will bar shareholders from disputing the validity of an assignment by the directors<sup>10</sup>).

b) Effect. — An assignment for the benefit of creditors does not dissolve the corporation or deprive it of its powers to sue<sup>11</sup>). It passes into the hands of the assignee all the property of the corporation, including its unpaid stock subscriptions<sup>12</sup>), but does not give him power to levy assessments except under the authority of the court superintending the administration<sup>13</sup>). By obtaining from the court an order requiring the payment of unpaid subscriptions, where such assessment is necessary to raise the money required to pay the corporate debts, the assignee may sue to collect this assessment<sup>14</sup>).

2. *PREFERENCES OF CREDITORS.* — a) In General. — It is the rule in most American jurisdictions, when not changed by statute, that a corporation has the same power as a natural person to prefer some creditors to the exclusion of others in paying off or securing its debts after insolvency<sup>15</sup>), or in making an assignment for the benefit of creditors<sup>16</sup>). This power continues until the corporate assets have been brought under the control of a court—for example by the appointment of a receiver<sup>17</sup>). Moreover a creditor may, even after insolvency, unless the rule is changed by statute, still secure a preference for himself over other creditors by obtaining a judgment or issuing and levying an execution or attachment<sup>18</sup>). The right to make or secure these preferences has in many states been put an end to by statute<sup>19</sup>); and some states deny it, even in the absence of a statutory prohibition.

<sup>1</sup>) *Symonds v. Lewis*, (1901) 94 Me. 501; *Olney v. Conanticut Land Co.*, (1889) 16 R. I. 597; cf. *Bridgens v. Dollar Savings Bank*, (1895) 66 Fed. 9; *Dundon v. McDonald*, (1905) 146 Cal. 585. — <sup>2</sup>) *Ellis v. Pullman*, (1895) 95 Ga. 445; *Panhandle Natl. Bank v. Emery*, (1890) 78 Tex. 498; *Mitchell v. Jordan*, (1905) 36 Wash. 645. — <sup>3</sup>) *American Steel & Wire Co. v. Eddy*, (1902) 130 Mich. 266. — <sup>4</sup>) *Moffat v. Smith*, (1900) 101 Fed. 771; *Clapp v. Peterson*, (1882) 104 Ill. 26. — <sup>5</sup>) *San Francisco, etc., R. R. v. Bee*, (1874) 48 Cal. 398; *Barrio v. United Rys. Co.*, (1907) 102 S. W. 1078 (Mo.); *Montgomery Web Co. v. Dienelt*, (1890) 133 Pa. 585. — <sup>6</sup>) *Graham v. LaCrosse, etc., R. Co.*, (1880) 102 U. S. 118. — <sup>7</sup>) *Graham v. LaCrosse, etc., R. Co.*, *supra*; *Sargent v. Webster*, (1847) 54 Mass. 497; *Vanderpoel v. Gorman*, (1894) 140 N. Y. 563; *Binder v. McDonald*, (1900) 106 Mo. 332. — <sup>8</sup>) *Boynton v. Roe*, (1897) 114 Mich. 401; *Hutchinson v. Green*, (1886) 91 Mo. 367. — <sup>9</sup>) *Chase v. Tuttle*,

(1888) 55 Conn. 455; *Publishing Co. v. Lothrop, etc., Co.*, (1906) 191 Mass. 353. — <sup>10</sup>) *Young v. Improvement Loan, etc., Assn.*, (1900) 48 W. Va. 512. — <sup>11</sup>) *Boston Glass Manufactory v. Langdon*, (1841) 41 Mass. 49. — <sup>12</sup>) *Hatch v. Dana*, (1879) 101 U. S. 205; *Epwright v. Nickerson*, (1883) 78 Mo. 482. — <sup>13</sup>) *Marson v. Deither*, (1892) 49 Minn. 423. — <sup>14</sup>) *Re Minnehaha Driving Park Assn.*, (1893) 53 Minn. 423. — <sup>15</sup>) *Smith, &c., Co. v. McGroarty*, (1890) 136 U. S. 237; *Coler v. Allen*, (1902) 114 Fed. 609; *Merced Bank v. Ivett*, (1899) 127 Cal. 134; *First Natl. Bank v. Garretson*, (1899) 107 Ia. 196. — <sup>16</sup>) *Blair v. Illinois Steel Co.*, (1896) 159 Ill. 350. — <sup>17</sup>) *Harrigan v. Gilchrist*, (1904) 121 Wis. 127. — <sup>18</sup>) *Louisville, etc., Co. v. Etheridge*, (1897) 43 S. W. 169; *La Grange, etc., Co. v. Natl. Bank*, (1894) 122 Mo. 154. — <sup>19</sup>) Cf. U. S. Bankruptcy Act, 30 U. S. Statutes at Large, c. 541, p. 544; Conn. cf. Genl. Stats. 1902, sec. 1051; Ill. Laws 1877, p. 116, sec. 13; cf. *Chicago Title &*

on the ground that the assets of a corporation become on its insolvency a trust fund to be administered for the benefit of all its creditors, and a preference of some of them will therefore be set aside in equity<sup>1</sup>). The insolvency that prevents preferences in these states is such as puts an end to any reasonable expectation on the part of the corporation of continuing its business<sup>2</sup>). If the corporation is still a going concern, with an honest prospect of redeeming its fortunes, it is not insolvent within the meaning of the statutory or other prohibition on preferences<sup>3</sup>).

b) Preferences of the Corporation's Own Officers. — It is the general rule, even in states permitting an insolvent corporation to give or admit preferences generally, that such corporation cannot prefer its own directors or officers over its other creditors<sup>4</sup>). When a corporation must cease business on account of its insolvency, its managers, by reason of their position and their control of the funds of the corporation, become fiduciaries of the creditors, and cannot use their position to secure or grant themselves any advantage over other claimants<sup>5</sup>). This disability extends so far as to prevent directors from securing for themselves from the corporation an indemnity against liability on debts of which they are guarantors, securities, or endorsers<sup>6</sup>), and even from granting to a second and creditor corporation of which also they are officers a preference over other creditors of the first corporation<sup>7</sup>). This fiduciary relation of directors arises as soon as they know the corporation is insolvent<sup>8</sup>), or is on the verge of insolvency, so that a payment made or security given is made or given in contemplation of insolvency<sup>9</sup>). But so long as the directors can in good faith continue the business with honest belief in its ultimate success, they may secure the payment of claims which they have rightfully acquired against the corporation<sup>10</sup>). Some jurisdictions, however, permit an insolvent corporation, if it is represented by other disinterested directors or shareholders, to grant preferences to directors or officers who are its bona fide creditors<sup>11</sup>), and also permit such director-creditors to obtain a preference over other creditors by execution or attachment<sup>12</sup>).

c) Preferences of Shareholders. — The disability of directors to secure a preference for themselves from the corporation does not extend to shareholders, who have no such advantage over other shareholders by virtue of their position. They stand on equal footing with other creditors. If, in the particular jurisdiction, preferences can be granted to other creditors, or be obtained by them through attachment, execution, or similar means, they can be granted to or obtained by shareholders<sup>13</sup>). But if the shareholder is also a director, or is a sole shareholder, he is treated like a director in the matter<sup>14</sup>).

**D. Effect of the Sale of all the Corporate Property on the Rights of Creditors<sup>15</sup>).**

**E. Effect of Dissolution<sup>16</sup>).**

**F. Effect of Reorganization and Consolidation<sup>17</sup>).**

**G. Right of Set-off by Debtors of the Corporation. —** If a debtor of an insolvent corporation has himself a claim against the corporation on a transaction entered

Trust Co. v. Smith, (1895) 158 Ill. 417; Mass. Pub. Stats., c. 157, secs. 96, 98, 134; Minn. R. L., secs. 4618, 4625; cf. Yanish v. Pioneer Fuel Co., (1896) 64 Minn. 175; N. J. C. A., sec. 64; N. Y. S. C. L., sec. 66; Laws 1909, c. 61; Wis. S., sec. 1694.

<sup>1</sup>) Nelson v. Svea Publishing Co., etc., (1910) 178 Fed. 136; Rouse v. Merchants' Natl. Bank, (1889) 46 Ohio St. 493; cf. Boyes v. Turk Mining Co., (1910) 56 Wash. 515. — <sup>2</sup>) Corey v. Wadsworth, (1892) 99 Ala. 68, 78. — <sup>3</sup>) Sabin v. Columbia Fuel Co., (1893) 25 Ore. 15; Hinz v. Van Dusen, (1897) 95 Wis. 503. — <sup>4</sup>) In re Builders' Lumber Co., (1906) 148 Fed. 244; Jessup v. Thomasson, (1904) 68 N. J. Eq. 443; Hill v. Standard Mfg. Co., (1904) 209 Pa. St. 231. — <sup>5</sup>) Cf. Richards v. N. H. Ins. Co., (1861) 43 N. H. 263; Adams & Westlake Co. v. Deyette, (1895) 8 S. Dak. 119. — <sup>6</sup>) Richards v. N. H. Ins. Co., supra; cf. Sanford Fork & Tool Co. v. Howe, Brown, & Co., (1895) 157 U. S. 312; Rockford Whole-

sale Grocery Co. v. Standard, &c., Meat Co., (1898) 175 Ill. 89. — <sup>7</sup>) Slack v. Northwestern

Natl. Bank, etc., (1899) 103 Wis. 57. —

<sup>8</sup>) Beach v. Miller, (1889) 130 Ill. 162. —

<sup>9</sup>) Miller v. Audenried, (1904) 67 N. J. Eq. 252; Lamb v. Pannell, (1886) 28 W. Va. 663.

— <sup>10</sup>) Holt v. Bennett, (1888) 146 Mass. 437; cf. Converse v. Sharpe, (1900) 161 N. Y. 571.

— <sup>11</sup>) Wyman v. Bowman, (1904) 127 Fed.

257; Wilson v. Stevens, (1901) 129 Ala. 630; cf. City Natl. Bank v. Goshen Woolen Mills

Co., (1904) 163 Ind. 214. — <sup>12</sup>) Rollins v. Shaver Wagon, etc., Co., (1890) 80 Ia. 380;

and cf. Hogsett v. Columbia, etc., Steel Co., (1902) 203 Pa. St. 148. — <sup>13</sup>) Bouton v. Smith,

(1885) 113 Ill. 481; Sargent v. Webster, (1847)

54 Mass. 497. — <sup>14</sup>) Siddell v. Missouri Pacific

R. Co., (1897) 78 Fed. 724; Atwater v. American Exchange, etc., Bank of Chicago, (1894)

152 Ill. 605. — <sup>15</sup>) Vide supra, XI, B, C. — <sup>16</sup>) Vide supra, VII, C. — <sup>17</sup>) Vide supra, IX, A, B.

into prior to the insolvency, he is entitled, at least in equity<sup>1)</sup>, to a set-off<sup>2)</sup>, unless his debt to the corporation is on a subscription to its stock<sup>3)</sup>. His right is not cut off by a statutory prohibition against preferences<sup>4)</sup>, nor by the fact that he may have acquired the claim by assignment<sup>5)</sup>, nor by the fact that either this claim<sup>6)</sup> or his debt to the corporation<sup>7)</sup> was not matured at the time of the insolvency, if it had arisen before that time<sup>8)</sup>.

**H. Creditors' Rights to have a Receiver appointed for the Corporation.** — The creditors' rights to have the corporate affairs wound up under the direction of a receiver have already been discussed<sup>9)</sup>. In certain cases creditors have a right to have a receiver appointed for other purposes than the winding up of the corporate business<sup>10)</sup>. If it is clearly necessary to take the corporate management out of the hands of the officers to prevent their fraudulent wasting of the corporate assets, a creditor who has established his claims by a judgment and who can show that he has exhausted his legal remedies may apply to a court of equity for the appointment of a receiver<sup>11)</sup>; and where, in the exercise of its sound discretion, it deems so drastic a remedy essential, it will grant the petition<sup>12)</sup>. Bad judgment in the conduct of the business<sup>13)</sup>, or even insolvency<sup>14)</sup>, do not in the absence of statute entitle the creditor to a receiver. Fraud on the part of the management, and the peril of the corporate assets to which the creditor has established a claim, must be shown<sup>15)</sup>. A general creditor has no standing in a court of equity to ask for the appointment of a receiver<sup>16)</sup> unless he can show imminent danger of irreparable injury to his claim by the waste or diversion of the corporate assets<sup>17)</sup>. The objection that the petitioner is a general creditor must be taken by the corporation before the receiver has been appointed or it will be held to have been waived<sup>18)</sup>. Even a judgment creditor must have exhausted his legal remedies, and so must show that he has had an execution returned unsatisfied<sup>19)</sup>, or that the corporation has no property subject to execution<sup>20)</sup>.

**I. Creditors' Rights against Shareholders.** — **1. IN GENERAL.** — At common law the sole right of the corporate creditor is against the corporation. Shareholders as such have no personal liability for debts of the corporation<sup>21)</sup> unless it has been imposed on them by statute<sup>22)</sup>. They may, however, by unanimous consent, make themselves liable as sureties for the debts of the corporation<sup>23)</sup>, and are then entitled to the rights as well as the liabilities of sureties<sup>24)</sup>. Even in the absence of such statute or contract liability of shareholders, upon the dissolution or insolvency of the corporation creditors are given in equity a right to compel the shareholders to pay up the amounts unpaid on their subscriptions to

<sup>1)</sup> *Scott v. Armstrong*, (1892) 146 U. S. 499; *St. Paul & Minneapolis Trust Co. v. Leck*, (1894) 57 Minn. 87. — <sup>2)</sup> See cases in preceding note, and *North Chicago Rolling Mill Co. v. St. Louis Ore. etc., Co.*, (1894) 152 U. S. 596; *Merrill v. Cape Ann Granite Co.*, (1894) 161 Mass. 212; *Laybourn v. Seymour*, (1893) 53 Minn. 105. — <sup>3)</sup> *Sawyer v. Hoag*, (1873) 17 Wall. 610; *Hebbard v. Southwestern Land, etc., Co.*, (1896) 55 N. J. Eq. 18; but cf. *Shields v. Hobart*, (1903) 172 Mo. 491. — <sup>4)</sup> Cf. *Scott v. Armstrong*, *supra*. — <sup>5)</sup> *Van Dyck v. McQuade*, (1881) 85 N. Y. 616; *Oyster v. Short*, (1896) 177 Pa. St. 589. — <sup>6)</sup> *Carr v. Hamilton*, (1889) 129 U. S. 252. — <sup>7)</sup> *Scott v. Armstrong*, *supra*. — <sup>8)</sup> *Stone v. Dudge*, (1893) 96 Mich. 514; *Oyster v. Short*, *supra*. — <sup>9)</sup> *Vide supra*, VII, D, 3. — <sup>10)</sup> For distinction, *vide United States Trust Co. v. New York, etc., R. Co.*, (1886) 101 N. Y. 478, and *Decker v. Gardiner*, (1891) 124 N. Y. 334. — <sup>11)</sup> *Farmers' Loan & Trust Co. v. Meridian Water Works Co.*, (1905) 139 Fed. 661; and cf. *Union Mutual Life Ins. Co. v. Union Mills Plaster Co.*, (1889) 37 Fed. 286; *Falmouth Natl. Bank v. Cape Cod, etc., Co.*, (1896) 166 Mass. 550. — <sup>12)</sup> Cf. *Weiss v. Haight*

& *Freese Co.*, (1906) 148 Fed. 399; *Leigh v. Natl. Hollow Brake-Beam Co.*, (1906) 224 Ill. 76; *Harrigan v. Gilchrist*, (1904) 121 Wis. 127. — <sup>13)</sup> *Pond v. Framingham, etc., R. Co.*, (1906) 190 Mass. 194. — <sup>14)</sup> *Trust, etc., Co. of Onondaga v. Spartanburg Water Works Co.*, (1898) 91 Fed. 324. — <sup>15)</sup> Cf. *Pullan v. Cincinnati, etc., R. Co.*, (1865) 4 Biss. 35. — <sup>16)</sup> *Hollins v. Brierfield Coal, etc., Co.*, (1893) 150 U. S. 371; *Smith v. Superior Court*, (1893) 97 Cal. 348; cf. *Moe v. McNally Co.*, (1910) 123 N. Y. Supp. 71. — <sup>17)</sup> *D. A. Tompkins Co. v. Catawba Mills*, (1897) 82 Fed. 780; *Kentucky Racing, etc. Assn. v. Galbreath*, (1903) 77 S. W. 371 (Ky.). — <sup>18)</sup> *Hollins v. Brierfield Coal, etc., Co.*, *supra*; *State v. Circuit Court*, (1898) 98 Wis. 143. — <sup>19)</sup> Cf. *Brown v. Lake Superior Iron Co.*, (1890) 134 U. S. 530. — <sup>20)</sup> *Sage v. Memphis & Little Rock R. Co.*, (1888) 125 U. S. 361. — <sup>21)</sup> *Terry v. Little*, (1879) 101 U. S. 216; *Parkhurst v. Mexican S. E. R. Co.*, (1902) 102 Ill. App. 507. — <sup>22)</sup> *Vide infra*, XI, 1, 3. — <sup>23)</sup> *London, & C. Bank v. Parrott*, (1899) 125 Cal. 472; *Tidioute Savings Bank v. Libbey*, (1898) 101 Wis. 193. — <sup>24)</sup> *Home Natl. Bank v. Waterman*, (1891) 134 Ill. 461.



shares, so far as these sums are necessary to pay the creditors' claims against the corporation<sup>1</sup>).

2. CREDITORS' RIGHT TO ENFORCE THE PAYMENT OF SUBSCRIPTIONS TO SHARES. — a) Bases. — 1. "*Trust Fund Theory*." — The subscribed capital stock of a corporation is the basis on which it does business and on which credit is given it by persons dealing with it<sup>2</sup>). Early in the history of American law this obvious fact originated the doctrine known as the "*Trust Fund Theory*". Justice Story laid it down as a general principle that the capital stock of a corporation is a trust fund for the payment of all the debts of the corporation; that creditors have a first claim upon it, that they can follow it into the hands of any persons having notice of the trust, and that shareholders as such have such notice. The application made of the doctrine in the case in which it was first promulgated<sup>3</sup>) was to prevent a distribution of funds representing a bank's capital stock among its shareholders while creditors remained unpaid — a clear case of fraud upon creditors<sup>4</sup>). But later cases developed the theory so as to make unpaid subscriptions a part of the trust fund, and subject to the right of creditors by a suit in equity to compel a payment upon them up to par, or as far as was necessary to meet the creditors' claims<sup>5</sup>). This right of creditors is held to extend even to a power to compel a shareholder who had an agreement with his corporation, valid as between the corporation and himself, that the corporation would issue him full paid stock for less than par, to pay the par value of his shares at the suit of the creditor<sup>6</sup>). The "*Trust Fund*" doctrine has received the approval, in general terms, of many state<sup>7</sup>) and federal courts<sup>8</sup>), but the exact limits of its application in a given jurisdiction is a matter of great uncertainty, as most decisions could well be supported on other grounds.

2. "*Fraud Theory*." — The "*Trust Fund Theory*" presents so many logical difficulties in its widest applications<sup>9</sup>), and is so far inconsistent with the admitted law — e. g. as to preference<sup>10</sup>), that it is being less used as a basis for decisions as time goes on. To-day it probably means merely that when a corporation is dissolved and its business wound up, or when it is insolvent, the creditors are entitled in equity to have their debts paid out of the corporate property before any distribution is made among the shareholders<sup>11</sup>). The right of creditors in equity to compel shareholders to pay up the par value of their subscriptions is based now by many jurisdictions on the doctrine that the shareholders who subscribe the stock of a corporation themselves represent that this stock is paid for, or will be paid for up to its par value, and that they are bound in equity to make that representation good to those who have given credit to the corporation on the basis of the subscribed capital stock<sup>12</sup>).

b) Extent of the Creditor's Right. The creditor can compel the payment of any balance remaining unpaid upon the contract of subscription at the time of the insolvency or dissolution of the corporation<sup>13</sup>). Moreover, if the contract has been fully performed as between the corporation and the subscriber by payment on the part of the latter in services or property at an intentional overvaluation<sup>14</sup>), or upon a discount agreed to by the corporation<sup>15</sup>), the creditor is not concluded by this contract between the company and the shareholder, but still has the right to exact

<sup>1</sup>) *Sawyer v. Hoag*, (1873) 17 Wall. 610; *Hospes v. Northwestern Mfg., etc. Co.*, (1892) 48 Minn. 174; and vide infra, XI, I, 2. — <sup>2</sup>) Cf. *Me. R. S.* c. 47, sec. 87. — <sup>3</sup>) *Wood v. Dummer*, (1824) 3 Mason 308. — <sup>4</sup>) Vide supra, XI, B, 2. — <sup>5</sup>) *Sawyer v. Hoag*, (1873) 17 Wall. 610. — <sup>6</sup>) *Upton v. Tribblecock*, (1875) 91 U. S. 45; *Scovill v. Thayer*, (1881) 105 U. S. 143. — <sup>7</sup>) E. g.: *Vermont Marble Co. v. Deelee, etc., Co.*, (1902) 135 Cal. 579; *Crandall v. Lincoln*, (1884) 52 Conn. 73; *Clapp v. Peterson*, (1882) 104 Ill. 26; *Spear v. Grant*, (1819) 16 Mass. 9; *Natl. etc., Trust Co. v. Miller*, (1880) 33 N. J. Eq. 155; *Slee v. Bloom*, (1822) 19 Johns. 456 (N. Y.); *Adler v. Milwaukee, etc., Mfg. Co.*, (1860) 13 Wis. 57. — <sup>8</sup>) *Sawyer v. Hoag*, supra; *Richardson v. Green*, (1890) 133 U. S. 30. — <sup>9</sup>) Cf. *Mitchell, J.*, in *Hospes v. Northwestern Mfg. Co.*, (1892) 48 Minn.

174; *Graham v. LaCrosse, etc. R. Co.*, (1880) 102 U. S. 148. — <sup>10</sup>) Vide supra, XI, C, 2. —

<sup>11</sup>) *Wabash, St. Louis, etc., Ry. Co. v. Hann*, (1885) 114 U. S. 587; and cf. *Hollins v. Brierfield Coal & Iron Co.*, (1893) 150 U. S. 371. —

<sup>12</sup>) *Hospes v. Northwestern Mfg. Co.*, supra. —

<sup>13</sup>) *Addison v. Pacific Coast Milling Co.*, (1897) 79 Fed. 459; *Harmon v. Page*, (1882) 62 Cal. 448, and cases in secs. XI, I, 2, a, 1 and 2 supra. — <sup>14</sup>) *Taylor v. Walker*, (1902) 117 Fed. 737;

*Higgins v. Illinois Trust & Savings Bank*, (1901) 193 Ill. 394; cf. *Dieterle v. Ann Arbor Paint, etc. Co.*, (1906) 143 Mich. 416; *Merchants' & Mechanics' Savings Bank v. Belington Coal, etc., Co.*, (1902) 51 W. Va. 60; and cf. sec. VI, C, 1, c, 3, supra. — <sup>15</sup>) *New Haven Trust Co. v. Gaffney*, (1901) 73 Conn. 480; *First Natl. Bank v. Northrup*, (1910) 109 Pac. 672 (Kas.); *Shaw v. Staight*, (1909) 107 Minn. 152.



a full payment of the par value of the shares. The right, however, is confined to those shareholders who became such subsequent to the contract complained of<sup>1)</sup> and without knowledge of or assent to the contract<sup>2)</sup>, in other words, to such creditors as may reasonably have relied on the representations made by the par value of the capital stock of the corporation. It has also been held that where a corporation, already organized and a going concern, issues stock in good faith at the market value of such stock, even although this is less than par, if the issue is rendered necessary by the financial embarrassment of the corporation, subscribers to such stock will not be compelled at the suit of creditors to pay up the par value of the stock<sup>3)</sup>.

c) *Defenees Open to Shareholders.* — A creditor can compel a subscriber to shares in a corporation to pay up to the par of his subscription only when the corporation itself could do so<sup>4)</sup>, or when the subscriber is estopped as against the creditor from disputing the validity of his subscription. Thus if the subscription was on a condition precedent which the corporation has not performed<sup>5)</sup>, or if the subscription has been rescinded for fraud on the part of the corporation<sup>6)</sup>, or the subscriber has been released in pursuance of a valid compromise with the corporation<sup>7)</sup>, or if his shares have been forfeited<sup>8)</sup>, or if he has in good faith transferred his shares before the suit was brought, the subscriber is not liable, unless by estoppel, in a suit by creditors. But the transfer will not be held to be bona fide if made to a person who is irresponsible or insolvent, or if otherwise made in order to escape liability<sup>9)</sup>. A subscriber is estopped against creditors from setting up the invalidity of his subscription if he has subsequently to it acted as a shareholder, e. g. by taking dividends or accepting office<sup>10)</sup>.

d) *Extent of the Shareholder's Liability.* — The creditors' right is to recover only so much as is necessary for the satisfaction of the debts of the corporation<sup>11)</sup>; but they may pursue this right against any shareholder. The shareholder's liability is several, and he is liable to pay the full amount due on his subscription<sup>12)</sup>. If he pays more than his share as between the shareholders, he is entitled to contribution from them<sup>13)</sup> unless the right is cut off by statute<sup>14)</sup>. This remedy is open to him in equity either by a crossbill in the creditors' suit in which he is made defendant, to bring in other shareholders<sup>15)</sup>, or by an independent suit against them<sup>16)</sup>.

e) *Remedies of Creditors.* — 1. *At Law.* — The creditor's right against the shareholders cannot be pursued at law in the absence of statute<sup>17)</sup>, unless a call on the shareholders has already been made by the corporation and remains unpaid. In this case, the debt being one already due the corporation, the creditor can reach it by garnishment or attachment, or other process open to him in a suit against the corporation<sup>18)</sup>, unless the jurisdiction holds the "Trust Fund Theory" in a form that prevents a creditor from obtaining a preference for himself over other creditors by

<sup>1)</sup> *Handley v. Stutz*, (1891) 139 U. S. 417; *McBride v. Farrington*, (1904) 131 Fed. 797; *First Natl. Bank of Deadwood v. Gustin, etc., Co.*, (1890) 42 Minn. 327. — <sup>2)</sup> *Coit v. Gold Analgaming Co.*, (1886) 119 U. S. 43; *Meyer v. Ruby-Trust Mining, etc., Co.*, (1905) 192 Mo. 162. — <sup>3)</sup> *Fogg v. Blair*, (1891) 139 U. S. 118; *Handley v. Stutz*, *supra*; *Ingraham v. Commercial Lead Co.*, (1910) 177 Fed. 431; *Dummer v. Smedley*, (1896) 110 Mich. 466. — <sup>4)</sup> *Zang v. Wyant*, (1898) 25 Colo. 551; cf. *Sargent v. Stetson*, (1902) 181 Mass. 371. — <sup>5)</sup> *Temple v. Lemon*, (1884) 112 Ill. 51; *Brown v. Dibble's Estate*, (1887) 65 Mich. 520. — <sup>6)</sup> *Ramsey v. Thompson Mfg. Co.*, (1893) 116 Mo. 313. — <sup>7)</sup> *New Haven Trust Co. v. Nelson*, (1901) 73 Conn. 477. — <sup>8)</sup> Cf. *Crissey v. Cook*, (1903) 67 Kans. 20. — <sup>9)</sup> *Anglo-American Land, etc., Co. v. Lombard*, (1904) 132 Fed. 721; *Welch v. Sargent*, (1899) 127 Cal. 72; *Burt v. Real Estate Exchange*, (1896) 175 Pa. St. 619; *Atlanta, etc., Cheese Assn. v. Smith*, (1909) 141 Wis. 377. — <sup>10)</sup> *Tulare Savings Bank v. Talbot*, (1900)

131 Cal. 45; *Lyell Ave. Lumber Co. v. Light-house*, (1910) 121 N. Y. Supp. 802; *Heinze v. South Green Bay Land, etc., Co.*, (1901) 109 Wis. 99. — <sup>11)</sup> *Seovill v. Thayer*, (1881) 10 5U. S. 143; cf. *In re New Iberia Cotton Mills Co.*, (1904) 113 La. Ann. 404; *Stevens v. Episcopal Church History Co.*, (1910) 125 N. Y. Supp. 573. — <sup>12)</sup> *Hatch v. Dana*, (1879) 101 U. S. 205; *New York Life Ins. Co. v. Beard*, (1897) 89 Fed. 66; *Edwards v. Schillinger*, (1910) 215 Ill. 231. — <sup>13)</sup> *Allen v. Fairbanks*, (1889) 40 Fed. 188; *Singer v. Hutchinson*, (1900) 183 Ill. 606; *Mass. B. C. L.*, sec. 33; *Minn. R. L.*, sec. 3069; *Tex. R. S.*, Art. 686; *Wis. S.*, sec. 1755. — <sup>14)</sup> *Del. G. C. L.*, sec. 50; *N. J. C. A.*, sec. 93. — <sup>15)</sup> *Coleman v. Howe*, (1895) 154 Ill. 458. — <sup>16)</sup> *Singer v. Hutchinson*, *supra*; *Putnam v. Misochi*, (1905) 189 Mass. 421. — <sup>17)</sup> *Patterson v. Lynde*, (1882) 106 U. S. 519; *Thompson-Houston Electric Co. v. Murray*, (1897) 60 N. J. L. 20; *Hawkins v. Donnerberg*, (1901) 40 Ore. 97. — <sup>18)</sup> *Prentice v. United States & Central American Steamship Co.*, (1897) 78 Fed. 106.

such process<sup>1)</sup>. Statutes, however, in many states provide a remedy at law for creditors<sup>2)</sup>.

2. *In Equity*. — In the absence of statute the normal remedy of a creditor is in equity. He must, however<sup>3)</sup>, first exhaust his remedy at law, or show why this was impossible<sup>4)</sup> or would be futile<sup>5)</sup>. Even though there is a statutory remedy at law, this does not cut off the creditor's remedy in equity<sup>6)</sup>. Nor does the imposition of a statutory liability on the shareholders personally for the debts of the corporation<sup>7)</sup>. The remedies are supplementary to each other and can be united in one action<sup>8)</sup>. A creditor's bill to compel shareholders to pay up their subscriptions should be brought on behalf of all creditors who choose to come in<sup>9)</sup>. In most jurisdictions it may be maintained against one or more shareholders without making all the shareholders parties<sup>10)</sup>. If the creditors in this way recover from one shareholder more than his share, he may have contribution from the other shareholders; but the creditors have no concern as to this<sup>11)</sup>.

3. **PERSONAL LIABILITY OF SHAREHOLDERS UNDER STATUTORY PROVISIONS.** — a) *In General*. — In the absence of statute the shareholders of a corporation are not liable personally for any of its debts. But under constitutional or statutory provisions many states have imposed in the past, and some still impose, some measure of personal liability on shareholders in corporations created under their laws<sup>12)</sup>. The tendency is toward the abolition of such provisions. Those which exist vary greatly in nature, extent, and manner of enforcement, so that no general description can be given of them; and any thorough discussion would have to treat the terms of each particular statute separately. In many states the liability is confined to particular sorts of debts, e. g. wages of employes<sup>13)</sup>, a few impose a liability for debts in a sum equal to the amount of stock a shareholder holds<sup>14)</sup>; and some for such proportion of the debts of the corporation as the amount of stock held by him bears to the whole stock of the corporation<sup>15)</sup>. Penal liabilities have been imposed in some states upon shareholders for debts contracted in violation of a statute<sup>16)</sup>, or for failures in filing reports<sup>17)</sup>. Sometimes the liability to one extent or another is imposed only until the capital stock has been paid in<sup>18)</sup>.

b) *Extent of the Liability*. — Where the liability is imposed on shareholders for all debts of the corporation, or some similar phrase is used, the words are construed to include all liabilities arising out of contracts<sup>19)</sup>, at least out of contracts within the power of the corporation<sup>20)</sup>. This includes interest on the debt<sup>21)</sup>. Whether tort liabilities or liabilities on judgments rendered against the corporation for torts

<sup>1)</sup> *Bunn's Appeal*, (1884) 105 Pa. St. 49; and cf. XI, C, 2, and I, 2, a, *supra*. —

<sup>2)</sup> *Conn. P. A.* 1903, c. 194, sec. 16; *Del. G. C. L.*, secs. 20, 49, 51; *Ill. G. C. L.*, secs. 8, 12, and cf. 25; *Me. R. S.*, c. 47, sec. 89; *Minn. cf. R. L.*, sec. 3181; *N. J. cf. C. A.*, sec. 92; *N. Y. cf. S. C. L.*, secs. 56—59; *Tex. R. S.*, Arts. 671, 684. — <sup>3)</sup> *New Hampshire Savings Bank v. Rickey*, (1903) 121 Fed. 956; *Gause v. Boldt*, (1907) 188 N. Y. 546; cf. *Gillin v. Sawyer*, (1899) 93 Me. 151. — <sup>4)</sup> E. g. because of the dissolution of the corporation. *Lewinsohn v. Stoddard*, (1906) 78 Conn. 575; *Lang v. Lutz*, (1903) 180 N. Y. 254. —

<sup>5)</sup> *Terry v. Anderson*, (1877) 95 U. S. 628; *Andrews v. O'Reilly*, (1903) 25 R. I. 231. —

<sup>6)</sup> Cf. *Hatch v. Dana*, (1879) 101 U. S. 205; *Washington Savings Bank v. Butchers' & Drovers' Bank*, (1891) 107 Mo. 133. — <sup>7)</sup> *Bunko v. Maze*, (1909) 10 Cal. App. 206. — <sup>8)</sup> *New York Life Ins. Co. v. Beard*, (1897) 80 Fed. 66; *Northwestern Railroad v. Prior*, (1897) 68 Minn. 95; *Barriek v. Gifford*, (1890) 47 Ohio St. 180. — <sup>9)</sup> *Patterson v. Lynde*, (1882) 106 U. S. 519; *First Natl. Bank of Barre v. Hingham Mfg. Co.* (1879) 127 Mass. 563; cf. *McBryan v. Universal Elevator Co.*, (1902) 130 Mich. 111; *Bickley v. Schlag*, (1890) 46 N. J. Eq. 533. — <sup>10)</sup> *Ogilvie v. Knox Ins. Co.*,

(1859) 22 How. 380; cf. *Singer v. Hutchinson*, (1900) 183 Ill. 606; *Mountain Lake Land Co. v. Blair*, (1909) 63 S. E. 751 (Va.); *Conn. P. A.* 1903, c. 194, sec. 16; *Del. G. C. L.*, sec. 20; *Ill. G. C. L.*, sec. 8. *Contra*, *Bell's Appeal*, (1887) 115 Pa. St. 88. — <sup>11)</sup> Cf. *infra*, XI, 1, 3, e, 2. Cf. *Ogilvie v. Knox Ins. Co.*, *supra*; *Mountain Lake Land Co. v. Blair*, *supra*; *Minn. R. L.*, sec. 3069; cf. *Mich. C. A.*, sec. 29. — <sup>12)</sup> *Cal. Const.*, Art. XII., secs. 2, 3; *Civ. Code*, sec. 322; *Mass. B. C. L.*, secs. 33, 36—39; *Mich. Const.*, Art. XII., sec. 4; *C. A.*, secs. 21, 29; *Minn. Const.*, Art. X., sec. 3; *R. L.*, secs. 2865, 3069, 3181—3190; *N. Y. S. C. L.*, secs. 56—59; *Pa. Act.* of 1874, secs. 38 (8), 39 (4) (11). *L.* 1876, p. 30, sec. 3; *Wis. S.*, sec. 1769. — <sup>13)</sup> Cf. *Mass.*, *Mich.*, *N. Y.*, *Pa.*, *Wis.*, *supra*. — <sup>14)</sup> Cf. *Minn.*, *supra*. — <sup>15)</sup> Cf. *Cal.*, *supra*. — <sup>16)</sup> Cf. *Lawlor v. Burt*, (1857) 7 Ohio St. 34. — <sup>17)</sup> *Sayles v. Brown*, (1899) 40 Fed. 8; cf. *Elsbree v. Burt*, (1902) 24 R. I. 322. — <sup>18)</sup> *Close v. Potter*, (1898) 155 N. Y. 145. — <sup>19)</sup> *Borland v. Haven*, (1888) 37 Fed. 394; *Barron v. Burrill*, (1893) 86 Me. 72. — <sup>20)</sup> Cf. *Ward v. Joslin*, (1902) 186 U. S. 142, affirming s. c., (1900) 105 Fed. 224. — <sup>21)</sup> *Wells, Fargo & Co. v. Enright*, (1900) 127 Cal. 669; *Pine v. Western Natl. Bank*, (1901) 63 Kans. 462.

are to be included depends to some extent on the language of the statute; but very similar language has been construed differently in different jurisdictions<sup>1</sup>). Where the liability is for some special form of debt — e. g. wages or supplies — the creditor has the burden of showing that the claim comes within the statute<sup>2</sup>).

c) *Nature of the Liability.* — 1. *Contractual or Penal.* — The liability imposed on shareholders may be penal or contractual. Which it is, is determined by the effect rather than the form of the statute<sup>3</sup>). That under it creditors can enforce the payment of corporate debts against shareholders does not necessarily show that the liability is contractual. It is penal if the purpose of the statute is to prevent the doing of some act<sup>4</sup>), or to punish the omission of some other act<sup>5</sup>). Generally speaking, however, the liability under these statutes is contractual in its nature<sup>6</sup>). The shareholder is sometimes said by becoming a shareholder to agree to be bound by the provisions of the charter which imposes the liability to creditors upon him<sup>7</sup>). As contractual, the liability survives against the estate of a shareholder after his death<sup>8</sup>).

2. *That of Principal or Surety.* — Some statutes have been construed as imposing upon shareholders the liability of sureties<sup>9</sup>). In such cases, of course, any extension of time given the corporation on its obligation will discharge the shareholders<sup>10</sup>). Probably most statutes impose upon the shareholders the liability of principal debtors<sup>11</sup>). In such a case they are not discharged from liability by an extension of time granted to the corporation<sup>12</sup>).

3. *Joint or Several.* — The individual liability of shareholders may be joint, or joint and several, or several<sup>13</sup>). Where no such express provision is made the tendency is to construe the statute in favor of a several liability<sup>14</sup>). Where the statute provides that "each" shareholder shall be liable for corporate debts to a certain amount, the liability is held to be several<sup>15</sup>).

4. *Primary or Secondary.* — The liability of the shareholder may be primary, so that the creditor need not first exhaust his remedy against the corporation before proceeding against the shareholder<sup>16</sup>). This has been held to be the case under the California statute<sup>17</sup>). More often the liability is expressly or by clear implication secondary<sup>18</sup>). In such cases the corporation must first be proceeded against, or the uselessness of such proceeding be shown<sup>19</sup>). Statutes of this kind sometimes prescribe particular conditions precedent to a creditor's suit on the statutory liability, such as the bringing of action against the corporation within a limited time<sup>20</sup>), or a demand

<sup>1</sup>) Cf. *Powell v. Oregonian Ry. Co.*, (1889) 38 Fed. 187; *Brown v. Trail*, (1898) 89 Fed. 641; *Child v. Boston & Fairhaven Iron Works*, (1884) 137 Mass. 516; *B. F. Avery & Sons v. McClure*, (1909) 47 So. 901 (Miss.). — <sup>2</sup>) Cf. *Jones v. Avery*, (1883) 50 Mich. 326, and *Williamson v. Wadsworth*, (1867) 49 Barb. 294; *Conant v. Van Schaick*, (1857) 24 Barb. 87. — <sup>3</sup>) Cf. *Diversey v. Smith*, (1882) 103 Ill. 378. — <sup>4</sup>) *Gridley v. Barnes*, (1882) 103 Ill. 211. — <sup>5</sup>) *Sayles v. Brown*, (1899) 40 Fed. 8. — <sup>6</sup>) *Whitman v. Natl. Bank of Oxford*, (1900) 176 U. S. 559; *Wynman v. Bowman*, (1904) 127 Fed. 257; cf. *Knickerbocker Trust Co. v. Myers*, (1904) 133 Fed. 764; *Burnap v. Haskins Steam Engine Co.*, (1879) 127 Mass. 586; *Hanson v. Davison*, (1898) 73 Minn. 454; but cf. *Rice v. Merrimack Hosiery Co.*, (1875) 56 N. H. 114. — <sup>7</sup>) *Converse v. Ayer*, (1908) 197 Mass. 443. — <sup>8</sup>) *Richmond v. Irons*, (1887) 121 U. S. 27; *Mechanics' Savings Bank v. Fidelity Trust & Safe Deposit Co.*, (1898) 87 Fed. 113 (Kans. statute). *Miller & Lux v. Katz*, (1909) 10 Cal. App. 576; but cf. *Natl. German American Bank v. Tapley*, (1894) 56 Minn. 420. — <sup>9</sup>) *Ball Electric Light Co. v. Child*, (1897) 68 Conn. 522; *Pacific Elevator Co. v. Whitbeck*, (1901) 63 Kans. 102; *Means's Appeal*, (1877) 85 Pa. St. 75. — <sup>10</sup>) *Hanson v. Donkersley*, (1877) 37 Mich. 184. — <sup>11</sup>) *Flour City Natl. Bank v. Wechsel-*

*berg*, (1891) 45 Fed. 547 (Wis. statute); *Knowles v. Sandercock*, (1895) 107 Cal. 629; *Jagger Iron Co. v. Walker*, (1879) 76 N. Y. 521; *Schalucky v. Field*, (1888) 124 Ill. 617. — <sup>12</sup>) *Aultman's Appeal*, (1881) 98 Pa. St. 505. — <sup>13</sup>) Cal. Const.: "individually and personally liable;" Civ. Code, sec. 322: "Any creditor may institute joint or several actions against any of its stockholders." — <sup>14</sup>) *Terry v. Little*, (1879) 101 U. S. 216; *Childs v. Blethen*, (1905) 40 Wash. 340. — <sup>15</sup>) Minn. Const.: "Each stockholder shall be liable", etc.; *Hanson v. Davison*, (1898) 73 Minn. 454. *McCarthy v. Lavasche*, (1878) 89 Ill. 270. — <sup>16</sup>) *Myers v. Knickerbocker Trust Co.*, (1905) 139 Fed. 111; *Parmelee v. Price*, (1904) 208 Ill. 544; *Rehbein v. Rahr*, (1901) 109 Wis. 136; cf. Cal. Civ. Code, sec. 322. — <sup>17</sup>) *McGowan v. McDonald*, (1896) 111 Cal. 57; *Knowles v. Sandercock*, (1895) 107 Cal. 629. — <sup>18</sup>) Cf. Mass. B. C. L., secs. 33, 36—39; Mich. C. A., sec. 29; N. Y. S. C. L., sec. 59; Pa. Act of 1876, p. 30, sec. 3; Act. of 1874, secs. 15, 39. — <sup>19</sup>) *E. Remington & Sons v. Samana Bay Co.*, (1886) 140 Mass. 494; *Macomber v. Wright*, (1895) 108 Mich. 169; cf. *Rocky Mountain Natl. Bank v. Bliss*, (1882) 89 N. Y. 338; *Bates v. Day*, (1901) 198 Pa. St. 513. — <sup>20</sup>) Cf. N. Y., Pa., *supra*; and cf. *United Glass Co. v. Vary*, (1897) 152 N. Y. 121.

upon the corporate officers<sup>1)</sup>, or the occurrence of corporate insolvency, cessation of business, or practical dissolution<sup>2)</sup>.

d) Defences to Suit on Statutory Liability. — A person sued as shareholder will not be liable if he can show that he never became such<sup>3)</sup>, unless he is estopped as against the creditor from setting up such a defence<sup>4)</sup>; if he can show that his shares were properly forfeited prior to the time the creditor's claim arose<sup>5)</sup> or even subsequent to that time<sup>6)</sup>, unless the statute provides that the liability continues for debts contracted during the time that the shareholder held the stock<sup>7)</sup>.

Any actual shareholder, even though not registered as such, is liable to creditors<sup>8)</sup>. Persons registered on the books of the corporation as shareholders are *prima facie* liable<sup>9)</sup>; but they may show that their names were placed there without their knowledge or consent and remained there without their acquiescence<sup>10)</sup>. Thus in the absence of statutory provision a trustee<sup>11)</sup> or pledgee<sup>12)</sup> who is registered as owner is liable. But statutes frequently provide that in such cases the real beneficial owner is liable<sup>13)</sup>.

Whether a transfer will free the shareholder from liability depends on the terms of the statute primarily; but statutes of similar phrasing have received different interpretations. Where the statute provides on the one hand that the transferee shall succeed to all liabilities of the transferor<sup>14)</sup>, or on the other that a transfer shall not free the transferor<sup>15)</sup>, the meaning is clear. But some statutes provide merely that "the stockholders" of a corporation shall be liable for its debts<sup>16)</sup>. Perhaps the majority of jurisdictions interpret this language as making only those shareholders liable who were such at the time the debt was contracted, and holding them liable for this debt even after they have transferred their shares<sup>17)</sup>. Under statutes interpreted as relieving a transferor from liability the transfer must be in good faith<sup>18)</sup>, and to a responsible party<sup>19)</sup>. Persons who have acted as shareholders, or acquiesced in being held out as such, will be estopped as against creditors from denying that they are shareholders<sup>20)</sup>, or that the corporation was not legally constituted<sup>21)</sup>.

e) Who may Enforce. — 1. *In General.* — The statutory liability of shareholders is usually imposed solely for the benefit of creditors. It is not an asset of the corporation, and the corporation itself cannot avail itself of it<sup>22)</sup>, and hence no assignee of the corporation<sup>23)</sup>, nor receiver appointed to collect its assets<sup>24)</sup>. Statutes, however, have sometimes given receivers a power to collect from the shareholders the amount for which they were liable, in order to distribute it among creditors *pro rata*<sup>25)</sup>.

2. *Classes of Creditors.* — Where the liability is imposed for the benefit of a special class of creditors, e. g. laborers or employees, only those who prove themselves to be within the statutory provision are entitled to enforce the liability<sup>26)</sup>.

1) Cf. Pa., *supra*; and cf. Connecticut River Savings Bank v. Fiske, (1880) 60 N. H. 363. — 2) Cf. Mass., Mich., Minn., *supra*; cf. Hellinghead v. Woodward, (1887) 107 N. Y. 96. — 3) Vide *supra* VI, C, 1, b, and d; and cf. Sturtevant v. Natl., &c. Pipe Works, (1899) 88 Fed. 613. — 4) Vide *supra* VI, C, 1, d, and 2, c; and cf. Johnson v. Allis, (1898) 7, Conn. 207. — 5) Vide *supra*, VI, C, 1, e. — 6) Mills v. Stewart, (1869) 41 N. Y. 384. — 7) Cal. Civ. Code, sec. 322. — 8) American Alkali Co. v. Kurtz, (1905) 138 Fed. 392; Clevenger v. Moore, (1904) 71 N. J. L. 148. — 9) Cf. Cal. Civ. Code, sec. 322. — 10) Stephens v. Follett, (1890) 43 Fed. 842; Welch v. Gillelen, (1905) 147 Cal. 571; Me. R. S., c. 47, sec. 85. Cf. Shattuck, etc., Warehouse Co. v. Gillelen, (1908) 154 Cal. 778. — 11) Crease v. Babcock, (1846) 51 Mass. 525. Cf. Welles v. Larrabee, (1888) 36 Fed. 866. — 12) McDonald v. Dewey, (1906) 202 U. S. 510; Hurlburt v. Arthur, (1903) 140 Cal. 103. — 13) Cal. Civ. Code, sec. 322; Me. R. S., c. 47, secs. 84, 85; N. Y. S. C. L., sec. 58. — 14) As in the Federal Banking Law, R. S. United States, sec. 5152. — 15) Cf. Cal. and N. Y., *loc. cit.* XI, I, 3, a, note 12. — 16) Cf. Mich., Minn., Pa., Wis., *loc.*

*cit.* XI, I, 3, a, note 12. — 17) Mass. B. C. L., sec. 36. Chesley v. Pierce, (1855) 32 N. H. 388; Gager v. Paul, (1901) 111 Wis. 638; but cf. Brown v. Trail, (1898) 89 Fed. 641; Foster v. Row, (1899) 120 Mich. 1. — 18) Lamson v. Hutchings, (1902) 118 Fed. 321. — 19) McDonald v. Dewey, (1906) 202 U. S. 510; People's Home Savings Bank v. Rickard, (1903) 139 Cal. 285. — 20) Vide *supra*, VI, C, 1, d and 2, C., and Rand v. Columbia Natl. Bank, (1899) 94 Fed. 349; Tulare Savings Bank v. Talbet, (1900) 131 Cal. 45. — 21) Wallace v. Hood, (1898) 89 Fed. 11; cf. McCarthy v. Lavasche, (1878) 89 Ill. 270. — 22) Evans v. Nellis, (1902) 187 U. S. 271; Anglo-American Land, etc., Co. v. Lombard, (1904) 132 Fed. 721; First Natl. Bank of Barre v. Hingham Mfg. Co., (1879) 127 Mass. 563. — 23) Jacobsen v. Allen, (1882) 20 Blatchf. 525; Zang v. Wyant, (1898) 25 Colo. 551. — 24) Mechanics' Savings Bank v. Fidelity Ins. Co., (1898) 87 Fed. 113; Hancock Natl. Bank v. Ellis, (1898) 172 Mass. 39; Hirschfeld v. Fitzgerald, (1898) 157 N. Y. 166. — 25) Minn. R. L., secs. 3181—3190; cf. Wis. S., sec. 1756. — 26) Vide *supra*, XI, I, 3, a, note 13.

Whether creditors who are classed as shareholders can collect from other shareholders depends on the interpretation placed on the statute. In some states a creditor-shareholder may sue other shareholders at law for their proportion of the debt due him<sup>1)</sup>. Some jurisdictions hold that such a creditor has only a right in equity to sue for contribution<sup>2)</sup>, and some statutes have been interpreted as not extending any right whatever to him. A creditor by assignment has the same right as his assignor<sup>3)</sup>.

f) Mode of Enforcement. — Statutes frequently prescribe the manner in which the creditor may enforce the shareholder's personal liability. In such cases the statutory remedy is generally held to be exclusive<sup>4)</sup>. But where the statute prescribes no special remedy the question of whether the creditor must sue at law or in equity depends in general on whether his right is against the shareholders individually or against a fund to be provided by the shareholders' liability for all creditors pro rata. If the former, the action may be at law<sup>5)</sup>; if the latter, in equity<sup>6)</sup>. Under some statutes a creditor may sue either at law or in equity<sup>7)</sup>. Statutes very similarly worded have received different interpretations in different jurisdictions<sup>8)</sup>. When the suit is at law any creditor may sue without joining other creditors<sup>9)</sup>, and may sue shareholders jointly or severally or either, depending on the nature of the liability created by the statute<sup>10)</sup>. When the suit is in equity a creditor must sue on behalf of himself and all others who choose to come in<sup>11)</sup>, and should make all shareholders within the jurisdiction of the court<sup>12)</sup> parties defendant<sup>13)</sup>. The corporation in such a suit<sup>14)</sup>, or its representative<sup>15)</sup>, the assignee or receiver, should be made a party defendant. Under a statute which gives a cause of action to any creditor against any shareholder, the creditor who brings suit first obtains priority over other creditors so far as the shareholder sued is concerned<sup>16)</sup>. But where the statute creates a fund for the creditors ratably, and suit is brought by one creditor on behalf of all who will come in, independent actions by other creditors may be enjoined<sup>17)</sup>.

g) Enforcement of Liability in other States. — If the shareholder is a resident of a foreign jurisdiction, the statutory liability against him may generally be enforced through the courts of that jurisdiction if it is contractual, on the theory that the shareholder consented to the incurring of the liability by taking his shares<sup>18)</sup>. Such courts will not enforce a penal liability on shareholders<sup>19)</sup>, but will enforce a contractual liability<sup>20)</sup>, unless the statute grants the creditor a special remedy peculiar to the local jurisdiction<sup>21)</sup>, or unless the enforcement by the foreign court would be oppressive against the shareholders resident in the foreign state<sup>22)</sup>. In

1) Knowles v. Sandercock, (1895) 107 Cal. 629; Meyers v. Sierra, etc., Agricultural Assn., (1898) 122 Cal. 669; Janney v. Minneapolis, etc., Exposition, (1900) 79 Minn. 488. — 2) Thompson v. Meisser, (1884) 108 Ill. 359; Mathez v. Neidig, (1878) 72 N. Y. 100; cf. Potter v. Stevens Machine Co., (1879) 127 Mass. 592; McDowall v. Sheehan, (1891) 129 N. Y. 200. — 3) Whitman v. Citizens' Bank of Reading, (1901) 110 Fed. 503; Herman v. Recht, (1897) 116 Cal. 553. — 4) Fourth Natl. Bank of New York v. Franklyn, (1887) 120 U. S. 747; Russell v. Pacific R. Co., (1896) 113 Cal. 258. But cf. Henley v. Stevenson, (1903) 72 Pac. 518. — 5) Flash v. Conn, (1883) 109 U. S. 371; Knickerbocker Trust Co. v. Myers, (1904) 133 Fed. 764; Schalucky v. Field, (1888) 124 Ill. 617. — 6) Terry v. Little, (1879) 101 U. S. 216; Waller v. Hamer, (1902) 65 Kans. 168. — 7) Marine, etc., Mining & Mfg. Co. v. Bradley, (1881) 105 U. S. 175; cf. Pfohl v. Simpson, (1878) 74 N. Y. 137. — 8) Cf. Larrabee v. Baldwin, (1868) 35 Cal. 155, and Pollard v. Bailey, (1874) 20 Wall 520. — 9) Mechanics' Savings Bank v. Fidelity Ins., etc., Co., (1898) 87 Fed. 113; Thebus v. Smiley, (1884) 110 Ill. 316. — 10) Vide supra, XI, 1, 3, C; cf. Parmelco v. Price, (1904) 208

Ill. 544. — 11) Terry v. Little, (1879) 101 U. S. 216; cf. Hale v. Calder, (1902) 113 Fed. 670; First Natl. Bank of Barre v. Hingham, (1878) 127 Mass. 563. — 12) Cf. Childs v. Cleaves, (1901) 95 Me. 498. — 13) Middletown Natl. Bank v. Toledo, etc., R. Co., (1901) 113 Fed. 587; Clark v. Knowles, (1904) 187 Mass. 35. — 14) Continental Adjustment Co. v. Cook, (1906) 152 Fed. 652; May v. Black, (1890) 77 Wis. 101. — 15) Harper v. Union Mfg. Co., (1881) 100 Ill. 225. — 16) Thebus v. Smiley, (1884) 110 Ill. 316; Cole v. Butler, (1857) 43 Me. 401. — 17) Pfohl v. Simpson, (1878) 74 N. Y. 137. — 18) Coltrane v. Templeton, (1901) 106 Fed. 370; Keystone Driller Co. v. Superior Court, etc., (1903) 138 Cal. 738; First Natl. Bank of Deadwood v. Gustin, etc., Mining Co., (1890) 42 Minn. 327. — 19) Sayles v. Brown, (1899) 40 Fed. 8; and vide supra, XI, 1, 3, C, 1. — 20) Nashua Savings Bank v. Anglo-American Land, Mortgage, etc., Co., (1901) 108 Fed. 764; Hancock Natl. Bank v. Ellis, (1898) 172 Mass. 39. — 21) Fourth Natl. Bank of New York v. Franklyn, (1887) 120 U. S. 747; Hunt v. Whewell, (1904) 122 Wis. 33. — 22) Lackmann v. Supremo Council, etc., (1904) 142 Cal. 22; Childs v. Cleaves, (1901) 95 Me. 498; Olds v. City Trust, etc., Security Co., (1904) 185 Mass. 500.

enforcing the liability, the foreign court will follow the interpretation of the statute laid down by the decisions of the state which passed it<sup>1</sup>).

h) Bars to Creditor's Right of Action. The statutory liability of shareholders being solely for the benefit of creditors, it may be waived by them<sup>2</sup>), or shareholders may be released by them<sup>3</sup>). Payment by the corporation of the debt of course discharges shareholders *pro tanto*<sup>4</sup>), and payment by a shareholder to one creditor where the shareholders' liability is several, discharges *pro tanto* the personal liability<sup>5</sup>); so also a judgment against the shareholder in favor of one creditor, even though not paid, discharges his liability to other creditors<sup>6</sup>). The insolvency or bankruptcy of the corporation is not a bar to suits by creditors against the shareholders<sup>7</sup>). In the absence of special provision, the general statute of limitations applies to statutory liabilities of shareholders, depending on the nature of the liability, whether penal or<sup>8</sup>) contractual<sup>9</sup>). But special provisions of the statute imposing the liability frequently require suit to be brought within a specified time different from that of the general statute<sup>10</sup>); or the general statute itself may have a special provision applicable to such a cause of action. In the absence of special provision the statute of limitations begins to run against the creditor's right when the creditor's cause of action accrues. This time is determined by the statute imposing the liability. If the liability is primary the cause of action against the shareholders accrues with that against the corporation, the statute begins to run from that time<sup>11</sup>), and a suspension of the remedy against the corporation will not suspend the statute in favor of the shareholder<sup>12</sup>). If the liability is secondary and arises only when the conditions precedent for a suit by the creditors against the shareholders has arisen, the statute does not begin to run in favor of the shareholders until these conditions arise<sup>13</sup>). If the statute makes the shareholders liable only after a judgment against the corporation and a return of an execution thereon unsatisfied, the completion of these steps is required, or an excuse for their non-performance, such as the dissolution of the corporation, is necessary to set the statute of limitations in operation in favor of the shareholders<sup>14</sup>).

#### I. Rights of Creditors against Directors and other Officers of a Corporation. —

1. IN GENERAL. — In the absence of statute creditors have no rights against the directors or other officers of a corporation on contracts made by these officers within the scope of their authority on behalf of the corporation<sup>15</sup>). Nor will mistakes made honestly by the officers, even if they cause loss to the corporation and so to the value of the creditors' securities, give the creditors a right against the officers<sup>16</sup>). If, however, the officers through positive misconduct or culpable negligence cause loss to the corporation so as to give the corporation a right of action against them<sup>17</sup>), this right of action may be enforced as an equitable asset of the corporation by creditors in the case of corporate insolvency<sup>18</sup>). The suit must be in equity by a creditors' bill<sup>19</sup>), and the amount of recovery is limited by the extent of the loss the wrong-doing has caused the creditors<sup>20</sup>).

<sup>1</sup>) *Chase v. Curtis*, (1885) 113 U. S. 452; *Fidelity Ins., etc., Co. v. Mechanics' Savings Bank*, (1899) 97 Fed. 297; *Ball v. Anderson*, (1900) 196 Pa. St. 86. — <sup>2</sup>) *Wells v. Black*, (1897) 117 Cal. 157; *Carnahan v. Campbell*, (1902) 158 Ind. 226; *Brown v. Eastern Slate Co.*, (1883) 134 Mass. 590. — <sup>3</sup>) *Prince v. Lynch*, (1869) 38 Cal. 528; and cf. *Powell v. Eldred*, (1878) 39 Mich. 552. — <sup>4</sup>) *San Jose Savings Bank v. Pharis*, (1881) 58 Cal. 380. — <sup>5</sup>) *Thebus v. Smiley*, (1884) 110 Ill. 316; *Mathez v. Neidig*, (1878) 72 N. Y. 100. — <sup>6</sup>) *Buchanan v. Meisser*, (1883) 105 Ill. 638; *Cushing v. Perrot*, (1896) 175 Pa. St. 66. — <sup>7</sup>) *In re Marshall Paper Co.*, (1899) 95 Fed. 419; *Sleeper v. Goodwin*, (1887) 67 Wis. 577. — <sup>8</sup>) *Gridley v. Barnes*, (1882) 103 Ill. 211. — <sup>9</sup>) *Carrol v. Green*, (1875) 92 U. S. 509; *Wiles v. Suydam*, (1876) 64 N. Y. 173. — <sup>10</sup>) *Vide supra*, XI, I, 3, a, note 12; and cf. *Whitman v. Citizens' Bank of Reading*, (1901) 110 Fed. 503. — <sup>11</sup>) Cal. Code of Civ. Procedure, sec. 359; and cf. *Platt v. Wilmot*, (1904) 193 U. S. 602; *Hunt v. Ward*, (1893) 99 Cal.

612; *Bank of San Luis Obispo v. Pacific Coast S. S. Co.*, (1894) 103 Cal. 594. — <sup>12</sup>) *Young v. Rosenbaum*, (1870) 39 Cal. 646. — <sup>13</sup>) *Taylor v. Bowker*, (1884) 111 U. S. 110; *Hollingshead v. Woodward*, (1887) 107 N. Y. 96. — <sup>14</sup>) *Terry v. Tubman*, (1875) 92 U. S. 156; *Handy v. Draper*, (1882) 89 N. Y. 334; *Bronson v. Schneider*, (1892) 49 Ohio St. 438. — <sup>15</sup>) *Wait v. McKee*, (1910) 128 S. W. 1028 (Ark.). *Tilley v. Cuykendall*, (1902) 172 N. Y. 587; cf. *Shoun v. Armstrong*, (1900) 59 S. W. 790 (Tenn.). — <sup>16</sup>) *Force v. Age-Herald Co.*, (1903) 136 Ala. 271; *Williams v. McDonald*, (1886) 37 N. J. Eq. 409; *Deadrick v. Bank of Commerce*, (1898) 100 Tenn. 457. — <sup>17</sup>) *Vide supra*, V, C, 8, a. — <sup>18</sup>) *Rice v. Madelia Farmers' Warehouse Co.*, (1902) 87 Minn. 398; *Campbell v. Watson*, (1901) 62 N. J. Eq. 396. — <sup>19</sup>) *Schley v. Dixon*, (1858) 24 Ga. 273. — <sup>20</sup>) *Foster v. Bank of Abington*, (1898) 88 Fed. 604; *Rice v. Howard*, (1902) 136 Cal. 432; cf. *Stafford v. St. John*, (1905) 164 Ind. 277.

2. **UNDER STATUTES.** — It is, however, usual for states to impose by statute liability upon directors or other officers for specified misdeeds and negligences, such as failure to file reports required by statute<sup>1)</sup>, or the filing of false or misleading reports<sup>2)</sup>, the payment of dividends out of capital stock<sup>3)</sup>, and other similar misconduct<sup>4)</sup>. Such statutes are in a sense penal in their nature<sup>5)</sup>, and hence are strictly construed in favor of the officers<sup>6)</sup>; but they are remedial as regards creditors<sup>7)</sup>.

**XII. CORPORATE BONDS AND MORTGAGES.** — A creditor may protect himself in whole or in part against the directors becoming insolvent, by obtaining a lien or charge on some or all of the corporate property. The most usual forms of corporate securities are mortgages and bonds. A mortgage fundamentally is a direct conveyance of certain corporate property to the creditor on condition that if the corporation pays off his claim he will reconvey the property. A bond is a transfer of such corporate property to a third party called a trustee, who holds it in trust for the bondholders.

**A. Corporate Bonds.** — 1. **ISSUE.** — a) In General. — A corporation has power to give its creditors security in the form of bonds or mortgages<sup>8)</sup>. The working capital of corporations is frequently raised, in part at least, by the issue of bonds. This power to issue bonds or mortgages is incident both to the power to borrow<sup>9)</sup> and to the power to pay for property acquired by or work done for the corporation<sup>10)</sup>. Express power to incur bond or mortgage indebtedness is usually conferred on corporations by the modern incorporation acts<sup>11)</sup>, and the power is safeguarded by the prescription of prerequisite conditions<sup>12)</sup>. But defective compliance with these conditions will not invalidate the bonds in the hands of bona fide purchasers for value, so long as the authority to issue existed and has merely been exercised irregularly<sup>13)</sup>. If the issue was wholly unauthorized the bonds would be invalid even in the hands of a bona fide purchaser<sup>14)</sup>.

b) Issue at a Discount. — The issue of bonds at a discount is treated more leniently than the issue of shares of stock at a discount. Such issues are not invalid<sup>15)</sup> unless they violate the usury laws<sup>16)</sup>; and issues in payment for work and labor are held not in any case to violate such laws<sup>17)</sup>. Moreover, a frequent provision of incorporation statutes denies the defence of usury to a corporation<sup>18)</sup>. Several states have by constitution or statute prohibited corporations from issuing bonds for anything else than money, labor or property, and coupled this with a provision that all fictitious increase of bonded indebtedness

1) Vide supra, V, D, 4; and cf. *Continental Natl. Bank v. Buford*, (1901) 107 Fed. 188; *Deleria v. Atkins*, (1909) 158 Mich. 232. — 2) Vide supra, V, C, 8; Cf. *Allen v. Neale*, (1909) 121 S. W. 612 (Ky.); *Harvey Watts Co. v. Worcester Co.*, (1906) 193 Mass. 138. — 3) Vide supra, V, C, 8, b. *Ebelhar v. German-American Security Co.'s Assignee*, (1909) 119 S. W. 220 (Ky.); *Siegmán v. Maleney*, (1902) 63 N. J. Eq. 422. — 4) Vide supra, V, C, 8, b. — *James H. Rice Co. v. Libbey*, (1901) 105 Fed. 825. — 5) *Providence Steam Engine Co. v. Hubbard*, (1879) 101 U. S. 188; *Carr v. Rischer*, (1890) 119 N. Y. 117. — 6) *Park Bank v. Remsen*, (1895) 158 U. S. 337; *Chicago, Rock Island, etc., R. Co. v. People*, (1905) 217 Ill. 164. — 7) *Huntington v. Attrill*, (1892) 146 U. S. 657; *Audenried v. East Coast Milling Co.*, (1904) 68 N. J. Eq. 450. — 8) *White Water Valley Canal Co. v. Valette*, (1858) 62 U. S. 414; *Morgan v. Hedstrom*, (1900) 164 N. Y. 224. — 9) *Big Creek, &c., Iron Co. v. American Loan & Trust Co.*, (1904) 127 Fed. 625; *Nelson v. Hubbard*, (1892) 96 Ala. 238; *Galena v. Corwith*, (1868) 48 Ill. 423. — 10) *Memphis, &c. R. R. v. Dow*, (1887) 120 U. S. 287. — 11) Cal. Civ. Code, sec. 359; Conn. P. A. 1903, c. 194, sec. 59; Del. G. C. L., sec. 2 (4), 20 Del. Laws, c. 579; Ill. G. C. L., sec. 5 (5); La. R. S. 1870, sec. 692, amended Act No. 20

of 1902, p. 37; Me. R. S., c. 47, sec. 48; Mass. B. C. L., sec. 4 (f) (9); Minn. R. L., sec. 2852 (4); N. J. C. A., secs. 1 and 2; cf. *Hackensack Water Co. v. DeKay*, (1883) 36 N. J. Eq. 548; and cf. P. L. 1902, p. 217; N. Y. S. C. L., sec. 6; Lien Law, sec. 231; Pa. L. 1889, p. 257; L. 1901, p. 3; Tex. R. S., Art. 653; W. Va. Code, c. 52, secs. 1, 21; c. 54, sec. 82b, 1, II; Wis. S., sec. 1748; L. 1905, p. 618; P. I. C. L., sec. 13 (5). — 12) Vide supra, III, C, 4 and 6. — 13) *Louisville, etc., Ry. Co. v. Louisville Trust Co.*, (1899) 174 U. S. 674; *William Firth Co. v. S. Car. Loan, etc., Co.*, (1903) 122 Fed. 569; *Hoskins v. Seaside Ice Co.*, (1905) 68 N. J. Eq. 476. — 14) *In re Waterloo Organ Co.*, (1904) 134 Fed. 341; *Scott v. Bankers' Union*, (1906) 85 Pac. 604 (Kans.). — 15) *Franklin Trust Co. v. Rutherford, etc., Electric Co.*, (1898) 57 N. J. Eq. 42; *Gamble v. Queen's County Water Co.*, (1890) 123 N. Y. 91. — 16) Tex. R. S., Art. 3106, as amended G. L., Acts 1907, p. 277; cf. *Simmons v. Taylor*, (1889) 38 Fed. 682; *Commissioners, etc., v. Atlantic, etc., Ry.*, (1877) 77 N. Car. 289. — 17) *Memphis, etc., R. R. v. Dow*, (1887) 120 U. S. 287. — 18) Del. G. C. L., sec. 136; Ill. Act of May 24, 1879, sec. 11; N. J. P. L. 1902, p. 459; N. Y. Consol. Laws, c. 20, sec. 374; W. Va. Code, c. 52, sec. 22.



will be void<sup>1)</sup>. But these provisions have been construed as not intended to prevent a *bonâ fide* issue of bonds in payment for property the value of which is less than the par value of the bonds<sup>2)</sup>, but not less than their market value<sup>3)</sup>.

Where both bonds and shares are issued together for an amount less than the par value of both, the courts incline to uphold the issue, construing the discount to be on the bonds<sup>4)</sup>. Where the bonds are issued as collateral security for a debt of the corporation less than the face value, the bondholder can prove against the corporate estate for the par value of the bonds, and can recover up to the amount of his debt<sup>5)</sup>.

2. NEGOTIABILITY OF CORPORATE BONDS. — a) In General. — Corporate bonds are negotiable when made payable to order or to bearer<sup>6)</sup>. This is true even when they are issued under seal<sup>7)</sup>, and so of course where the peculiarities of sealed instruments have been abolished by statute<sup>8)</sup>. If the bonds are issued payable in blank, any holder can fill in the blank so as to make it payable to himself or his order, and he can then sue upon it in his own name<sup>9)</sup>.

b) Rights of *bonâ fide* Purchasers. — Where bonds are negotiable they are good in the hands of *bonâ fide* purchasers without notice, even if the corporation would have a defence against them in the hands of the original holder<sup>10)</sup>. The transferee of a bond is deemed to be such a *bonâ fide* holder for value, and this presumption must be rebutted by evidence<sup>11)</sup>. Under this principle, even if the bonds in question have been issued in violation of a charter provision they will be valid in the hands of a *bonâ fide* purchaser<sup>12)</sup>. Moreover, the bonds cannot be cancelled by the corporation; nor can the mortgage back of them be set aside or cancelled if the bonds have come into the hands of such a *bonâ fide* purchaser<sup>13)</sup>.

c) Who is a *bonâ fide* Purchaser. — To entitle the holder of corporate bonds to the rights of a *bonâ fide* purchaser for value to be free from defences good against his transferor, the holder must in the first place have paid something of value for the bonds<sup>14)</sup>. He must have no actual notice of their invalidity<sup>15)</sup>, and he must not be wilfully ignorant as to the defences against the bonds<sup>16)</sup>. He is bound to take notice of the provisions of the statute authorizing the bonds, if the statute is referred to on the face of the bonds<sup>17)</sup>. Similarly, if the bonds refer to the mortgage which is to constitute the purchaser's security, the terms of the mortgage will thus be held to have been brought to his notice<sup>18)</sup>, at least so far as they are not inconsistent with the tenor of the bonds themselves<sup>19)</sup>. Defects in the execution of the bonds, obvious on their face, will give constructive notice of their invalidity; thus the absence on of the endorsement of the President of the corporation in the place provided for it is such a defect<sup>20)</sup>. So also the purchaser will be put on notice of probable invalidity

<sup>1)</sup> Cal. Const., Art. XII, sec. 11; Civ. Code, sec. 359; La. cf. R. S. 1870, sec. 692, as amended Act No. 30 of 1902, p. 37; N. Y. S. C. L., sec. 55; Tex. Const., Art. XII, sec. 6; Wis. cf. S., sec. 1753; L. 1907, p. 410.

<sup>2)</sup> *Sioux City, etc., Ry. Co. v. Manhattan Trust Co.*, (1899) 92 Fed. 428; *Western Supply & Mfg. Co. v. U. S. & Mexican Trust Co.*, (1906) 92 S. W. 986 (Tex.). — <sup>3)</sup> *Wyoming Valley Ice Co.*, (1907) 153 Fed. 787, affirmed 158 Fed. 608; *Wiegand v. Lewis Lumber Co.*, (1908) 158 Fed. 608; *Union, etc., Trust Co. v. Southern California, etc., Co.*, (1892) 51 Fed. 840. — <sup>4)</sup> *Dickerman v. Northern Trust Co.*, (1900) 176 U. S. 181; *Dummer v. Smedley*, (1896) 110 Mich. 476. — <sup>5)</sup> *Western Supply, etc., Co. v. U. S., etc., Co.*, (1906) 92 S. W. 986 (Tex.). — <sup>6)</sup> *Spooner v. Holmes*, (1869) 102 Mass. 503; *McClelland v. Norfolk Street R. Co.*, (1888) 110 N. Y. 469; cf. *Stegmaier v. Keystone Coal Co.*, (1909) 225 Pa. St. 221. — <sup>7)</sup> See cases in note 6. — <sup>8)</sup> *Clapp v. Cedar County*, (1857) 5 Ia. 15. — <sup>9)</sup> *White v. Vermont, etc., R. Co.*, (1858) 21 How. 575 (U. S.); *Hoskins v. Seaside, etc., Ice Co.*, (1905) 59 Atl. 645 (N. J.). — <sup>10)</sup> *Peoria, etc., R. Co. v. Thompson*, (1882) 103 Ill. 187;

*Gibson v. Lenhart*, (1882) 101 Pa. St. 522. —

<sup>11)</sup> *Gibson v. Lenhart*, supra. — <sup>12)</sup> *Sioux City, etc., Warehouse Co. v. Trust Co.*, (1899) 173 U. S. 99; *Hackensack Water Co. v. DeKay*, (1883) 36 N. J. Eq. 548; *Ellsworth v. St. Louis, etc., R. Co.*, (1885) 98 N. Y. 553. —

<sup>13)</sup> *Lewis v. Meier*, (1882) 14 Fed. 311; and cf. *Hinckley v. Pfister*, (1892) 83 Wis. 64. —

<sup>14)</sup> Cf. *Kennicott v. Wayne County*, (1874) 6 Biss. 138; *Gilman v. New Orleans, etc., R. Co.*, (1882) 72 Ala. 566. — <sup>15)</sup> *Chew v. Henrietta Mining, etc., Co.*, (1880) 2 Fed. 5; *Chicago v. Cameron*, (1887) 120 Ill. 447. —

<sup>16)</sup> *Hotchkiss v. Natl. Shoe, etc., Bank*, (1874) 21 Wall. 354. — <sup>17)</sup> *McClure v. Oxford, etc.*, (1876) 94 U. S. 429; *Morton v. New Orleans, etc., Assn.*, (1885) 79 Ala. 590; cf. *Spence v. Mobile, etc., R. Co.*, (1885) 79 Ala. 576. —

<sup>18)</sup> *Morton v. New Orleans, etc., Assn.*, (1885) 79 Ala. 590; *Grant v. Winona, etc., Ry. Co.*, (1902) 85 Minn. 422. — <sup>19)</sup> *Railway Co. v. Sprague*, (1880) 103 U. S. 756; cf. *Guilford v. Minneapolis, etc., Ry. Co.*, (1891) 48 Minn. 560. — <sup>20)</sup> *Parsons v. Jackson*, (1878) 99 U. S. 43; but cf. *Birchall v. Russell*, (1864) 29 N. Y. 220; *Welch v. Sage*, (1872) 47 N. Y. 143.



by the fact of the bonds being offered at a very small fraction of their par value<sup>1</sup>). On the other hand, a purchaser for value does not have to see that the money he pays for his bond is legally expended<sup>2</sup>). He may rely on recitals made in the bond by persons charged with the duty of ascertaining and certifying to the matters recited upon<sup>3</sup>). In general, negligence in purchasing will not impair his title, if he acts in good faith<sup>4</sup>). Although a purchaser after the maturity of the bond takes subject to all the defences available against his transferor<sup>5</sup>), the bond is not held to be overdue so as to prevent a transfer free of the equities between prior parties because some of the interest coupons on it were overdue<sup>6</sup>).

3. TRANSFERS OF BONDS. — The subscribers to an issue of bonds can compel the corporation to treat them as holders of the bonds<sup>7</sup>). When the bonds are issued their rights depend on the terms of their contract with the corporation, as contained in the bonds themselves and the mortgage which lies back of them<sup>8</sup>). If the bonds are negotiable, as is practically always the case<sup>9</sup>), they may be freely transferred by the first holder. It is usual, however, to give the holder an option to have the bonds registered, and so made payable to the registered owner. This registration does not, however, diminish the negotiability of the bonds, although changing the method of transfer<sup>10</sup>). The registered transferee, if a bona fide purchaser for value, takes free of equities against his transferor, and can sue on the bonds in his own name. Bonds which have been registered under the holder's option to do so can generally be taken off the register by a proper application, and again made payable to bearer<sup>11</sup>).

4. THE INCOME FROM CORPORATE BONDS, INTEREST COUPONS. — a) In General. — Interest upon bonds is payable to the holders, usually upon presentation of coupons which are attached to the bonds, and are generally in the form of promissory notes payable to bearer. These coupons are not merely warrants for the payment of interest on the bonds, but are also, when detached, negotiable instruments<sup>12</sup>), which protect a bona fide holder for value<sup>13</sup>), and on which action can be brought independent of the ownership<sup>14</sup>) or present existence<sup>15</sup>) of the bond to which they were originally attached. The coupon holder ordinarily ranks *pari passu* with the bondholder in his claims against the corporate assets<sup>16</sup>), and sometimes the bond or mortgage provides that the proceeds of the security shall be applied first to the payment of the interest, and then to the principal sum<sup>17</sup>).

b) Suits to Collect Coupons. — While a coupon-holder may sue at law upon an overdue coupon, and get judgment, he cannot levy an execution upon the mortgaged property to enforce his judgment, though he can levy upon such property as is not covered by the mortgage which secures his coupons<sup>18</sup>). No demand is necessary before commencing suit<sup>19</sup>), nor is the production of the bonds with the coupon attached<sup>20</sup>). The statute of limitations begins to run from the time when the

<sup>1</sup>) *Riggs v. Pennsylvania R. Co.*, (1883) 16 Fed. 804; *Grand Rapids, etc., R. R. Co. v. Sanders*, (1877) 54 How. Pr. 214. — <sup>2</sup>) *Lord v. Yonkers, etc., Co.*, (1885) 99 N. Y. 547. — <sup>3</sup>) *Stanton v. Alabama, etc., R. Co.*, (1875) 2 Woods 523. — <sup>4</sup>) Cf. *Welch v. Sage*, supra; *Spence v. Mobile, etc., Ry.*, (1885) 79 Ala. 576. — <sup>5</sup>) *Morgan v. U. S.*, (1885) 113 U. S. 476; *Edwards v. Bates County*, (1902) 117 Fed. 526. — <sup>6</sup>) *Railway Co. v. Sprague*, supra; *Central R. R., etc., Co. v. Farmers' Loan & Trust Co.*, (1901) 116 Fed. 700. — <sup>7</sup>) *Texas Western Ry. v. Gentry*, (1888) 69 Tex. 625; cf. *Augusta Trust Co. v. Federal Trust Co.*, (1907) 153 Fed. 157. — <sup>8</sup>) *Low v. Blackford*, (1898) 87 Fed. 392; cf. *Railway Co. v. Sprague*, (1880) 103 U. S. 756. — <sup>9</sup>) Even if they are left non-negotiable through some defect or otherwise, the corporation issuing them may be estopped from setting up their non-negotiability. Cf. *Board of Supervisors v. Mineral Point R. R. Co.*, (1869) 24 Wis. 93. — <sup>10</sup>) *Strauss v. United Telegram Co.*, (1895) 164 Mass. 130. — <sup>11</sup>) Cf. *Cooper v.*

*Illinois Central R. R. Co.*, (1899) 57 N. Y. Supp. 925, and *Clarkson Home v. Missouri, etc., Ry. Co.*, (1905) 182 N. Y. 47. — <sup>12</sup>) *Thompson v. Perrine*, (1882) 106 U. S. 589; *Fox v. Hartford, etc., Ry.*, (1897) 70 Conn. 1; *Haven v. Grand Junction, etc., Co.*, (1871) 109 Mass. 88. — <sup>13</sup>) *Spooner v. Holmes*, (1869) 102 Mass. 503. — <sup>14</sup>) *Kenosha City v. Lamson*, (1869) 9 Wall. 477; *Natl. Exchange Bank v. Hartford, etc., R. R. Co.*, (1866) 8 R. 1. 375. — <sup>15</sup>) *Clark v. Iowa City*, (1874) 20 Wall. 583. — <sup>16</sup>) *Ketchum v. Dunan*, (1877) 96 U. S. 659; *Humphreys v. Morton*, (1881) 100 Ill. 592; but cf. *Grand Trunk Ry. Co. v. Central Vermont R. Co.*, (1900) 105 Fed. 411. — <sup>17</sup>) *Low v. Blackford*, (1898) 87 Fed. 392; *Morton Trust Co. v. Home Telephone Co.*, (1904) 66 N. J. Eq. 106. — <sup>18</sup>) *Commonwealth v. Susquehanna, etc., R. R.*, (1888) 122 Pa. St. 306; and cf. *Roberts v. Denver, etc., R. R.*, (1896) 8 Colo. App. 504. — <sup>19</sup>) *Walnut v. Wade*, (1880) 103 U. S. 683. — <sup>20</sup>) *Cromwell v. Sac County*, (1876) 94 U. S. 351; *New London Bank v. Ware*, (1874) 41 Conn. 542.

coupons become due<sup>1</sup>). The same statute which is applicable to the bond applies to the coupons<sup>2</sup>).

5. **THE PRINCIPAL OF CORPORATE BONDS: MATURITY.** — The bond usually contains a promise on the part of the corporation to pay the principal at a certain time. It is quite common to have a provision by which the bonds are redeemable at the option of the corporation at or after a date prior to the date set for payment. At the later time the bond is said to have matured.

The agreement of the corporation also generally provides that if the corporation makes default in the payment of interest for a specified length of time after it is due, the principal shall immediately mature<sup>3</sup>). So also a breach of any other promise made by the corporation for the protection of the bondholders, such as a promise to pay the taxes on the property mortgaged to secure the bonds, may be stipulated to mature the principal<sup>4</sup>). In the absence of these provisions the principal is not matured by mere default<sup>5</sup>). Even where they do exist, it is also provided in some cases that a formal declaration by the bondholders that the principal is due is prerequisite to maturing the bonds<sup>6</sup>), and the default of the corporation may be waived by the bondholder<sup>7</sup>). In any case, to put the corporation in default in the payment of interest, a proper demand for payment must be made upon it<sup>8</sup>).

**B. The Security or Mortgage.** — 1. In General. — The security afforded to bondholders, and their priority over general creditors, is usually provided by means of a deed of trust in the nature of a mortgage. Generally, when a corporation issues a series of bonds, it makes at the same time a deed conveying some or all of its property to a trustee, who holds the property in trust for the benefit of the subscribers to the bonds and of their successors. The exact nature of this security, whether it is to be deemed in strictness a mortgage, depends upon the language of the deed<sup>9</sup>). It is at any rate a security for a corporate debt<sup>10</sup>). Even where no deed has been made, if the bonds themselves pledge the property of the corporation they will be treated as equivalent to a mortgage<sup>11</sup>), and any language interpretable as evidence of an intention to create a charge on the corporate property will be given that construction<sup>12</sup>).

2. **THE PROPERTY COVERED BY THE DEED OR OTHER CHARGE.** — The question frequently arises as to what property of the corporation is covered by the deed of trust. Where the property is specifically set forth in the deed itself, that is conclusive; but in some states, in cases where the corporation remains in possession of the property, a deed covering all the property in a certain locality is insufficient to charge a specific property as against the general creditors of the corporation<sup>13</sup>). It is generally held, however, that a mortgage of the corporate property even in general terms will extend to charge in equity not only that owned at the time the bonds were issued but also property acquired subsequently<sup>14</sup>), if the intention to charge after-acquired property affirmatively appear<sup>15</sup>). If the charge is upon certain kinds or certain parts of the corporate property, it may, if the intention appears, charge after-acquired property of the kind or part specified<sup>16</sup>). The charge may be upon the corporation's revenue or income<sup>17</sup>), or upon the right

<sup>1</sup>) *Koskonong v. Burton*, (1881) 104 U. S. 668; *Huey v. Macon County*, (1888) 35 Fed. 481. — <sup>2</sup>) *Lexington v. Butler*, (1871) 14 Wall. 282.

<sup>3</sup>) Cf. *Coe v. New Jersey Midland Ry. Co.*, (1879) 31 N. J. Eq. 105. — <sup>4</sup>) Cf. *Dickerman v. Northern Trust Co.*, (1900) 176 U. S. 181.

— <sup>5</sup>) *Chicago, etc., R. R. Co. v. Fosdick*, (1882) 106 U. S. 47; *Farmers' Loan & Trust Co. v. Missouri, etc., R. Co.*, (1880) 26 Fed. 485. — <sup>6</sup>) *Chicago, etc., R. R. Co. v. Fosdick*, supra; and cf. *Gates v. Boston, etc., R. Co.*, (1885) 53 Conn. 333. — <sup>7</sup>) *Arnot v. Union Salt Co.*, (1905) 186 N. Y. 501. —

<sup>8</sup>) *Chicago, etc., R. R. Co. v. Fosdick*, supra at p. 73; *Potomac Mfg. Co. v. Evans*, (1888) 84 Va. 717. — <sup>9</sup>) Cf. *Knickerbocker Trust Co. v. Penacook Mfg. Co.*, (1900) 100 Fed. 814; *Bishop v. McKillican*, (1899) 124 Cal. 321. —

<sup>10</sup>) *First Natl. Bank v. Sioux City Terminal, etc., Co.*, (1895) 69 Fed. 441. — <sup>11</sup>) *White*

*Water Valley Co. v. Vallette*, (1858) 21 How. 414; *Howard v. Iron & Land Co.*, (1895) 62 Minn. 298. — <sup>12</sup>) *Ketchum v. St. Louis*, (1879) 101 U. S. 306; but cf. *Wabash, etc., Ry. Co. v. Ham*, (1885) 114 U. S. 587, 596. —

<sup>13</sup>) *Central Trust Co. v. Worcester Cycle Mfg. Co.*, (1899) 93 Fed. 712; cf. *Union Trust Co. v. Mercantile Library Hall Co.*, (1899) 189 Pa. St. 263. — <sup>14</sup>) *Pennock v. Coe*, (1859) 23 How. 117; *Central Trust Co. v. Washington County R. R. Co.*, (1903) 124 Fed. 813; *Metropolitan Trust Co. v. Dolgeville Electric, etc., Co.*, (1901) 71 N. Y. Supp. 1055; but cf. *Marine Construction, etc., Co.*, (1906) 144 Fed. 649. — <sup>15</sup>) *Maxwell v. Wilmington Dental Mfg. Co.*, (1896) 77 Fed. 938. — <sup>16</sup>) Cf. *Smith v. McCullough*, (1881) 104 U. S. 25, and *Alabama v. Montague*, (1886) 117 U. S. 602. — <sup>17</sup>) *Canal Co.'s Case*, (1896) 83 Md. 549; cf. *Strauss v. United Telegram Co.*, (1895) 164 Mass. 130.

to enjoy the corporate franchises<sup>1)</sup>. In general, the exact nature and extent of the charge upon the corporate property depends upon the intent of the parties as inferable from their express contract and surrounding circumstances.

3. THE TRUSTEE. — The trustee of the property mortgaged for the benefit of the bondholders is an ordinary trustee. His rights, powers, duties, and liabilities are determined by the language creating the trust and by the general law of trusteeship<sup>2)</sup>. He is the representative of the bondholders collectively in all litigation connected with the trust<sup>3)</sup>. If he acts in good faith, a decree binding him in such litigation is binding upon them<sup>4)</sup>. He is usually authorized to take possession of the property covered by the charge, to enforce the bondholders' security<sup>5)</sup>, and under these powers can carry on the corporate enterprise with the powers and duties which a receiver has in such a situation<sup>6)</sup>. Frequently he is given a power of sale<sup>7)</sup>, and he is sometimes authorized by the deed of trust to buy in the property on behalf of the bondholders<sup>8)</sup>. If the trustee refuses to act for the protection or enforcement of the bondholders' security, any bondholder may file a bill in his place joining him as a party defendant<sup>9)</sup>. The trustee will be personally liable for loss resulting from his want of diligence in protecting or enforcing the security<sup>10)</sup>. He will also be liable to bondholders collectively for breaches of his trust<sup>11)</sup>. He may be removed by a court of equity in a proper proceeding<sup>12)</sup>.

4. CONTROL OF THE CORPORATION OVER THE PROPERTY CHARGED. — The corporation remains in possession of the property charged<sup>13)</sup>. It is frequently the case, especially where many pieces of property have been conveyed by the deed of trust, that the corporation may wish in the course of its ordinary business to dispose of some of this property. Usually an express stipulation is inserted in the deed to the effect that the corporation, with the trustee's consent, may dispose of the property and pass a title free of the claim of the bondholders<sup>14)</sup>. These powers are, however, strictly construed. Some implied power to dispose of property where such disposal is necessary in the ordinary carrying on of business is recognized, at least in the case of personal property<sup>15)</sup>. A corporation cannot place upon property under a deed of trust any mortgage or lien which will be prior to the previously issued bonds<sup>16)</sup>. But it has been held that an execution levied upon personal property in the possession of the corporation, even though the property is mortgaged for the security of the bondholder, will give the holder of the execution priority over the holder of the bonds<sup>17)</sup>.

5. ENFORCEMENT OF THE SECURITY. — a) In General. — When the obligation of the corporation has matured, either by expiry of the period limited in the bond or by default in payment of interest or breach of condition, the security may be made available for the bondholder by a power given in the deed of trust to the trustee to take possession of the property for the bondholders, or to sell it on their behalf<sup>18)</sup>. These remedies depend on the terms of the mortgage, but in any case enforcement may be had through a court of equity<sup>19)</sup>. This suit is in essence a suit to foreclose the mortgage<sup>20)</sup>. It should be brought by the trustee<sup>21)</sup>, but may be by

<sup>1)</sup> *Willamette Mfg. Co. v. Bank of British Columbia*, (1886) 119 U. S. 191. — <sup>2)</sup> *Cf. Sturges v. Knapp*, (1858) 31 Vt. 1. — <sup>3)</sup> *McElrath v. Pittsburg, etc.*, R. R. Co., (1871) 68 Pa. St. 37. — <sup>4)</sup> *Kent v. Lake, etc.*, Co., (1892) 144 U. S. 75; *Fletcher v. Ann Arbor R. R. Co.*, (1902) 116 Fed. 479. — <sup>5)</sup> *Nelson v. Hubbard*, (1892) 96 Ala. 238, 254. — <sup>6)</sup> *Chaffee v. Rutland R. R. Co.*, (1881) 53 Vt. 345; and *cf. Ashuelot R. R. Co. v. Elliot*, (1874) 57 N. H. 397. — <sup>7)</sup> *Cf. Michigan Trust Co. v. Lansing Lumber Co.*, (1899) 103 Mich. 392. — <sup>8)</sup> *Etna Coal, etc., Co. v. Marting Iron, etc., Co.*, (1904) 127 Fed. 32. — <sup>9)</sup> *Hotel Co. v. Wade*, (1877) 97 U. S. 13; *First Natl. Fire Ins. Co. v. Salisbury*, (1881) 130 Mass. 303. — <sup>10)</sup> *Merrill v. Farmers' Loan & Trust Co.*, (1881) 24 Hun. 297; and *cf. Frishmuth v. Farmers' Loan & Trust Co.*, (1899) 107 Fed. 169. — <sup>11)</sup> *Rhineland v. Farmers' Loan & Trust Co.*, (1902) 172 N. Y. 519; *Zebbley v. Farmers' Loan & Trust Co.*,

(1893) 139 N. Y. 461. — <sup>12)</sup> *Brooks v. Vermont Central R. R. Co.*, (1878) 14 Blatchf. 463; *Harrison v. Union Trust Co.*, (1895) 144 N. Y. 326; *cf. Dillaway v. Boston Gas Light Co.*, (1899) 174 Mass. 80. — <sup>13)</sup> *Nickerson v. Atchison, etc., R. Co.*, (1881) 17 Fed. 408; and *cf. Pierce v. Emery*, (1856) 32 N. H. 484, 521. — <sup>14)</sup> *Haven v. Adams*, (1862) 86 Mass. 80. — <sup>15)</sup> *Union Trust Co. v. Morrison*, (1888) 125 U. S. 591, 609. — <sup>16)</sup> *Toledo, etc., R. R. Co. v. Hamilton*, (1890) 134 U. S. 296. — <sup>17)</sup> *Union Trust Co. v. Morrison*, (1888) 125 U. S. 591, 609; *Eels v. Johann*, (1886) 27 Fed. 327; but *cf. Brainerd v. Peck*, (1861) 34 Vt. 496. — <sup>18)</sup> *Vide supra*, XII, B, 3. — <sup>19)</sup> *Guardian Trust Co. v. White Cliffs, etc., Co.*, (1901) 109 Fed. 523; *First Natl. Fire Ins. Co. v. Salisbury*, (1881) 130 Mass. 303. — <sup>20)</sup> *Decker v. Gardner*, (1890) 124 N. Y. 334. — <sup>21)</sup> *Grand Trunk Ry. Co. v. Central Vermont R. Co.*, (1900) 88 Fed. 622.

the bondholders if the trustee will not<sup>1)</sup>, or because of his own adverse interest<sup>2)</sup> or for other reasons cannot properly, bring suit<sup>3)</sup>. A suit by the bondholders should be on behalf of all who are similarly situated<sup>4)</sup>, i. e. all who hold bonds of the same series, if default has been made as to the whole series<sup>5)</sup>.

b) Appointment of Receiver. — The first step in the enforcement of the security in a suit on behalf of the bondholders is the appointment of a receiver. This remedy may be granted whenever the security is in danger<sup>6)</sup>, but especially when default has already been made<sup>7)</sup>. The rights, powers, duties, and liabilities of the receiver in bondholders' suits are in general those of an ordinary chancery receiver<sup>8)</sup>. Space here does not permit of any adequate discussion of them. The receiver may carry on the management of the business under the direction of the court<sup>9)</sup>. He usually does so only with a view to a profitable sale of the mortgaged property<sup>10)</sup>.

c) Sale of the Property. — The usual remedy ultimately sought by bondholders is a sale of the property, though a strict foreclosure is a possible remedy also<sup>11)</sup>. A sale may be had for default in payment of interest, and this even when the principal is not yet due<sup>12)</sup>. The time<sup>13)</sup> and terms<sup>14)</sup> of the sale rest in the discretion of the court. Opportunity will be given to the corporation or persons interested in it, such as junior encumbrancers<sup>15)</sup>, to redeem by paying off the arrears of indebtedness prior to the sale<sup>16)</sup>. The purchasers, unless the terms of the purchase stipulate otherwise<sup>17)</sup>, take free of the obligations of the mortgagor corporation, except such as are prior to the mortgage<sup>18)</sup>. The purchase money should be paid to the trustee<sup>19)</sup>. A sale or a foreclosure is usually followed by a reorganization of the corporation by the purchasers<sup>20)</sup>.

6. PRIORITY TO UNSECURED CREDITORS AS A RESULT OF BONDHOLDERS' APPLICATION FOR A RECEIVER. — A peculiar American doctrine, established in cases of public service corporations<sup>21)</sup>, has in several jurisdictions<sup>22)</sup> been extended to ordinary private business corporations. This is that where bondholders<sup>23)</sup> obtain through a court of equity the appointment of a receiver to enforce their security, the court will require that the operating expenses<sup>24)</sup> of maintaining the corporation as a going concern for some period, usually six months, prior to the appointment of the receiver shall be paid out of the income of the corporation, in preference to the claims of the holders of bonds or coupons. Moreover, if the earnings have been diverted from the payment of the creditors on operating expenses to the payment of interest on the bonds, or to improvements upon the mortgaged property, this diverted fund must be paid back out of the corpus of the estate<sup>25)</sup>.

### XIII. LEGISLATIVE CONTROL OVER DOMESTIC CORPORATIONS. —

A. Power to Repeal Charters. — In the absence of constitutional limitations, either federal or state, a legislature, under the American form of government, would have

<sup>1)</sup> *Hotel Co. v. Wade*, (1877) 97 U. S. 13; *Schulze v. Van Doren*, (1903) 65 N. J. Eq. 764.

— <sup>2)</sup> *Clay v. Selah Valley, etc., Co.*, (1896) 14 Wash. 543; *Etlinger v. Persian Rug, etc., Co.*, (1892) 112 N. Y. 189. — <sup>3)</sup> *Cochran v. Pittsburgh, etc., R. Co.*, (1907) 150 Fed. 682. — <sup>4)</sup> *New Orleans Pacific Ry. Co. v. Parker*, (1892) 143 U. S. 42. — <sup>5)</sup> *McFadden v. Mays Landing, etc., Co.*, (1891) 49 N. J. Eq. 176. — <sup>6)</sup> *Farmers' Loan & Trust Co. v. Meridian Water Works Co.*, (1905) 139 Fed. 661. — <sup>7)</sup> *Warner v. Rising, etc., Iron Co.*, (1878) 3 Woods 514; cf. *McLane v. Placerville, etc., R. R. Co.*, (1885) 66 Cal. 606. — <sup>8)</sup> Cf. *United States Trust Co. v. New York, etc., Ry. Co.*, (1896) 101 N. Y. 478. — <sup>9)</sup> Cf. *International Trust Co. v. Decker Bros.*, (1907) 152 Fed. 78. — <sup>10)</sup> *Bibber-White Co. v. White River, etc., R. Co.*, (1901) 110 Fed. 473; *Duncan v. Atlantic, etc., R. R. Co.*, (1880) 88 Fed. 840. — <sup>11)</sup> Cf. *Langdon v. Vermont, etc., R. R. Co.*, (1882) 54 Vt. 593. — <sup>12)</sup> *Ohio Central R. R. Co. v. Central Trust Co.*, (1890) 133 U. S. 83. — <sup>13)</sup> *American Loan, etc., Co. v. Union Depot Co.*, (1897) 80 Fed. 36. — <sup>14)</sup> *Turner v.*

*Indianapolis, etc., Ry. Co.*, (1878) 8 Biss. 380.

— <sup>15)</sup> Cf. *Simmons v. Burlington, etc., Ry. Co.*, (1895) 159 U. S. 278. — <sup>16)</sup> *Bound v. S. C., etc., Ry. Co.*, (1893) 58 Fed. 473. — <sup>17)</sup> *Anderson v. Condict*, (1899) 93 Fed. 349; cf. *N. Y., etc., R. R. Co. v. State*, (1888) 50 N. J. L. 303. — <sup>18)</sup> *Roberts v. Central Trust Co.*, (1904) 128 Fed. 882; *Campbell v. Pittsburgh, etc., Ry. Co.*, (1890) 137 Pa. St. 574. — <sup>19)</sup> *Coe v. Columbus, etc., Ry. Co.*, (1859) 10 Ohio St. 372. — <sup>20)</sup> Vide *supra*, IX, A. — <sup>21)</sup> Cf. *Fosdick v. Schall*, (1878) 99 U. S. 235; *Virginia, etc., Coal Co. v. Central R. R. Co.*, (1898) 170 U. S. 355. — <sup>22)</sup> *Gregg v. Mercantile Trust Co.*, (1901) 109 Fed. 220; *Drennan v. Mercantile Trust Co.*, (1897) 115 Ala. 592. — <sup>23)</sup> *Kneeland v. American Loan Co.*, (1890) 136 U. S. 89; cf. *Louisville, etc., R. R. Co. v. Memphis Gas Light Co.*, (1903) 125 Fed. 97. — <sup>24)</sup> *Kneeland v. American Loan Co.*, *supra*; *Southern Ry. Co. v. Carnegie Steel Co.*, (1900) 176 U. S. 257; cf. *Wood v. Guarantee Trust Co.*, (1888) 128 U. S. 416. — <sup>25)</sup> *Southern Ry. Co. v. Carnegie Steel Co.*, *supra*; *Drennan v. Mercantile Trust Co.*, *supra*.

absolute power over a corporation it had created<sup>1</sup>). But the provision of the United States Constitution forbidding a state to pass any law impairing the obligation of contracts was early decided to apply to the charters of domestic corporations, which were held to constitute a contract between the corporation and the state granting them, and also in a sense a contract between the state and the individual incorporators. Hence a legislature could not by subsequent legislation repeal or substantially alter the charter of a private corporation without the consent of the corporation<sup>2</sup>). But since a legislature can grant charters on any terms it chooses to make, it can reserve the right to alter, amend, or repeal any charter to be granted subsequently. All the states and territories of the Union have now reserved in some form, either by constitutional provision or in general law<sup>3</sup>), the right to alter, amend, or repeal any charter granted under the general act<sup>4</sup>). Under this reservation the power of the legislature to repeal a charter is apparently absolute, except in occasional cases where the power is to be exercised only on certain conditions<sup>5</sup>). The courts will not inquire into the legislative motive in acting<sup>6</sup>). Where the right of repeal is conditional it becomes absolute upon the happening of the condition<sup>7</sup>). By the probable weight of authority, the determination of the question whether the condition has happened is for the courts<sup>8</sup>).

**B. Power to Alter or Amend.** When the legislature seeks to exert its reserved power to alter or amend a charter, it must do so in a way consistent with the original object for which the associates incorporated, and must not defeat or substantially impair the object of the grant or any rights vested under it<sup>9</sup>). The presumption, however, is that the amendment is a valid exercise of the legislative power<sup>10</sup>). The reserved powers to repeal, to alter, and to amend do not give the legislature the right to impair or destroy any vested interests of the corporation, its shareholders, or its creditors. It cannot take the tangible property of the corporation under this power<sup>11</sup>), nor impair the rights of the shareholders and creditors in a distribution of the corporate property<sup>12</sup>). Nor can the legislature force an amended charter upon a corporation<sup>13</sup>). The corporation has the option of discontinuing business<sup>14</sup>). If the members of the corporation by unanimous consent adopt an amendment, of course it will become a part of their charter. Most general incorporation laws now provide specifically that some majority of the shareholders can compel a minority to accept any amendment that the state under its reserve power can legitimately propose<sup>15</sup>).

**C. Legislative Power under the Police Power of the State.** — The right of the state to protect the public safety, health, and morals is not limited even by the provisions of the Federal Constitution against the passage of laws impairing the obligation of contracts<sup>16</sup>). As was said by the Supreme Court in a case involving the regulation of a private corporation under the police power, "Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health, and property of the citizens, and to the preservation of good order and the public morals. The legislature cannot by any contract divest itself of the power to provide for these objects"<sup>17</sup>). It seems, however, that it is possible for a constitutional provision to divest

<sup>1</sup>) *Thorpe v. Rutland & Burlington R. Co.*, (1854) 27 Vt. 141. — <sup>2</sup>) *Trustees of Dartmouth College v. Woodward*, (1819) 4 Wheat. 518. — <sup>3</sup>) *Vide supra*, VII, B, note 15. — <sup>4</sup>) Of course such reservation by general law applies to all charters subsequently granted unless they are expressly excepted. In re *College Hill Land Assn.*, etc., (1910) 108 Pac. 681 (Cal.); *Watson Seminary v. Pike County Court*, (1899) 149 Mo. 57; and cf. VIII, B. — <sup>5</sup>) *State v. Louisville & N. R. Co.*, (1910) 51 So. 918. — <sup>6</sup>) *Greenwood v. Union Freight R. Co.*, (1881) 105 U. S. 13; *City of Wilmington v. Addicks*, (1900) 47 Atl. 366 (Del.). — <sup>7</sup>) Cf. *State v. Noyes*, (1859) 47 Me. 189. — <sup>8</sup>) Cf. *State v. Noyes*, *supra*. — <sup>9</sup>) *Shields v. Ohio*, (1877) 95 U. S. 319; *McKee v. Chautauqua Assembly*, (1904) 130 Fed. 536; *New York*

*Central & Hartford R. R. Co. v. Williams*, (1910) 199 N. Y. 108. — <sup>10</sup>) *State v. Curran*, (1851) 12 Ark. 321. — <sup>11</sup>) *Bienville Water Supply Co. v. Mobile*, (1902) 186 U. S. 212. — <sup>12</sup>) *Lothrop v. Stedman*, (1875) 42 Conn. 484; *People v. O'Brien*, (1888) 45 Hun. 519; *Blake v. Portsmouth, etc., R. R.*, (1859) 39 N. H. 435. — <sup>13</sup>) Cf. *Louisville & Nashville R. Co. v. Jarvis*, (1905) 87 S. W. 759 (Ky.). — <sup>14</sup>) *Yeaton v. Bank of Old Dominion*, (1872) 21 Grattan 593 (Va.). — <sup>15</sup>) *Vide supra*, II, F, 6, and cf. VI, D, 4, b, 4, d. — <sup>16</sup>) *Butchers' Union Co. v. Crescent City Co.*, (1883) 111 U. S. 74; *Northwestern Fertilizing Co. v. Village of Hyde Park*, (1878) 97 U. S. 659; and cf. *Chicago, Burlington, & Quincy R. Co. v. People*, (1906) 200 U. S. 561. — <sup>17</sup>) *Boston Beer Co. v. Massachusetts*, (1877) 97 U. S. 25.

the state of this police power with respect to any matter, and a constitutional provision guaranteeing a corporation from alteration or repeal of privileges granted it will remove these privileges from the scope of the police power of the state<sup>1</sup>). Apart from this, any corporation may have its granted powers and privileges restricted by legislation under the police power. Thus the prohibition of the manufacture of intoxicating liquor<sup>2</sup>), the regulation of conditions of employment<sup>3</sup>) and the payment of employes<sup>4</sup>), the removal of factories which have come to constitute a nuisance<sup>5</sup>), have all been held to be valid exercises of this power even where they injuriously affected or nullified contracts of the state with the corporations concerned.

**D. Legislative Power under the Power of Eminent Domain.** — The contract between the state and the corporation, embodied in the charter, does not restrict the state's right to exercise its power of eminent domain. Any property of the corporation, including its franchises or its stock, may be taken by the state for public use, or by another person, corporation, or individual, under authority from the state, upon the making of due compensation<sup>6</sup>).

#### **XIV. LEGISLATIVE CONTROL UNDER THE POWER OF TAXATION. —**

**A. Power to tax. — 1. IN GENERAL.** — The most important exercise of the power of the legislature over corporations is by means of the taxing power. The power to impose taxes is a part of the sovereign power of a state<sup>7</sup>). Congress is given power by the Federal Constitution to lay and collect taxes, and under this power may tax corporations<sup>8</sup>). The Federal government has by a recent statute<sup>9</sup>) imposed a tax upon all corporations organized for profit and having a capital stock, whether organized under the laws of the United States or of any state or territory of the United States, or in Alaska or the District of Columbia; or organized under the laws of any foreign country but engaged in business in any state or territory of the United States or in Alaska or the District of Columbia. This tax was held constitutional as a special excise tax levied with respect to the carrying on or doing business by such corporations<sup>10</sup>). The state governments levy a variety of taxes upon corporations within their jurisdiction, and are limited in their power only by the self-imposed limitations of their own constitutions and the limitations on their sovereignty imposed by the Federal Constitution. The extent of their powers to tax was well defined by the Supreme Court of the United States in the leading case of *State Tax on Foreign-Held Bonds*<sup>11</sup>). Justice Field, speaking for the court, said: "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property, and business. Whatever form taxation may assume, whether as duties, imposts, excises, or licenses, it must relate to one of these subjects. It is not possible to conceive of any other, though, as applied to them, the taxation may be exercised in a great variety of ways. It may touch property in every shape, in its natural condition, in its manufactured form, and in its various transmutations. And the amount of the taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the Federal Constitution, the power of the state as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction".

As a person a corporation is taxable in the state of its creation, and there only. But the corporate property may be taxed in any state in which it is found, and acts attributable to corporations wherever they are performed. Foreign corporations, in addition to the general taxes imposed by a state on corporate property and

<sup>1</sup>) *New Orleans v. Houston*, (1886) 119 U. S. 265. — <sup>2</sup>) *Boston Beer Co. v. Massachusetts*, supra; *Commonwealth v. Certain Intoxicating Liquors*, (1874) 115 Mass. 153.

— <sup>3</sup>) *Knoxville Iron Co. v. Harbison*, (1901) 183 U. S. 13; *Commonwealth v. Hamilton Mfg. Co.*, (1876) 120 Mass. 383. — <sup>4</sup>) *In re House Bill No. 147*, (1897) 23 Colo. 504.

— <sup>5</sup>) *Northwestern Fertilizing Co. v. Village of Hyde Park*, (1878) 97 U. S. 659.

— <sup>6</sup>) *Greenwood v. Union Freight R. Co.*, (1881) 105 U. S. 13; *Offield v. N. Y., N. H.,*

*& H. R. Co.*, (1906) 203 U. S. 372. — <sup>7</sup>) Cf. *San Joaquin, etc., Irrigation Co. v. Merced County*, (1906) 2 Cal. App. 593; *In re McKennan's Estate*, (1910) 126 N. W. 611 (S. D.).

— <sup>8</sup>) *Veazie Bank v. Fenno*, (1869) 8 Wall. 533; cf. *Const. U. S., Art. I, secs. 8 and 9.* — <sup>9</sup>) *An Act to Provide Revenue, etc.*, U. S. Stats. 1909, pp. 11, 112—117 Act, Aug. 6, 1909, sec. 38, et seq. — <sup>10</sup>) *Flint v. Stone, etc., Co.*, (1911) 31 S. C. R. 342. — <sup>11</sup>) *State Tax on Foreign-Held Bonds*, (1872) 15 Wall. 300.

the doing of business as a corporation, may be subjected to so-called retaliatory taxes<sup>1)</sup>

2. RESTRICTIONS ON THE POWER TO TAX. — a) Under the Federal Constitution. — The states have no power to tax property of the Federal government or the instrumentalities whereby its powers are carried out<sup>2)</sup>. A patent or copyright granted by the Federal government cannot itself be taxed, though the property resulting from the power to manufacture under the patent or publish under the copyright may be taxed<sup>3)</sup>. The Federal Constitution prohibits a state from denying to any person within its jurisdiction the equal protection of the laws. Corporations are persons within the meaning of this provision, and must not be taxed in a way which discriminates against them to put them at a disadvantage compared with similar corporations, or individuals in a similar situation<sup>4)</sup>. This provision, however, does not prevent a difference between the rate of taxation of corporations of different classes; and any reasonable classification of corporations for taxation purposes will be upheld<sup>5)</sup>. Again, the Federal Constitution prohibits any state from depriving any person of life, liberty, or property without due process of law, and this provision protects corporations against tax laws which would deprive them of their property without due process<sup>6)</sup>. Due process in tax proceedings, however, is not necessarily the same as in ordinary judicial proceedings<sup>7)</sup>. The effect upon the taxing powers of the individual states of the exclusive control granted to the Congress of the United States over interstate and foreign commerce is discussed in another connection<sup>8)</sup>.

b) Under State Constitutions and Statutes. — State constitutions frequently impose limits on the power of the state to tax by requiring that taxes be for public purposes only<sup>9)</sup>, or that they shall be equal and uniform throughout the state<sup>10)</sup>. This latter requirement, however, does not prevent any reasonable classification of corporations for the purposes of taxation<sup>11)</sup>.

3. EXEMPTIONS. — Many state constitutions require the legislature to subject all the property of corporations within the jurisdiction of the state to taxation<sup>12)</sup>. These requirements may take the form of a prohibition of any exemption of corporations from taxation<sup>13)</sup>. Some states however, for the purpose of encouraging certain classes of corporate enterprise, grant authority by constitutional provision to the legislature to grant to these classes of corporations, often including manufacturing corporations, exemption from taxation, and in some states this provision has been availed of<sup>14)</sup>. Moreover, in the absence of any constitutional prohibition on exemption, it would seem that the legislature could grant exemption at its discretion<sup>15)</sup>. The exemption may be permanent, or it may be for some term of years.

<sup>1)</sup> Vide infra, XV, D, 2, b, 2, b; cf. Del. Tax L., § 9; N. J. C. A., § 101. — <sup>2)</sup> McCulloch v. Maryland, (1819) 4 Wheat. 316, 436; Western Union etc., Co. v. Lakin, (1909) 53 Wash. 326; cf. Horn Silver Mining Co. v. New York, (1889) 143 U. S. 305. — <sup>3)</sup> People v. Assessors, (1898) 156 N. Y. 417; Commonwealth v. Westinghouse Electric & Mfg. Co., (1892) 151 Pa. St. 265. — <sup>4)</sup> Santa Clara County v. Southern Pacific Co., (1885) 118 U. S. 394; and cf. Natl. Bank of Commerce v. City of New Bedford, (1892) 155 Mass. 313; Erie Ry. v. State, (1864) 31 N. J. L. 531; Lively v. Missouri, K. & T. Co. of Texas, (1909) 120 S. W. 852. — <sup>5)</sup> Kidd v. Alabama (1902) 188 U. S. 730; Blue Jacket Consolidated Copper Co. v. Scherr, (1901) 50 W. Va. 533. — <sup>6)</sup> Adams Express Co. v. Ohio, (1896) 165 U. S. 194; cf. People v. New York State Board of Tax Commissioners, (1905) 199 U. S. 1. — <sup>7)</sup> Hagar v. Reclamation District No. 108, (1884) 111 U. S. 701; Kelly v. Pittsburgh, (1881) 104 U. S. 78. — <sup>8)</sup> Vide infra, XV, D, 2, a, 2, b. — <sup>9)</sup> Cf. Citizens' Savings & Loan Assn v. City of Topeka, (1874) 20 Wall. 655; and cf. Sutherland-Innes Co. v. Village of Evart, (1898) 86 Fed. 597. — <sup>10)</sup> Cal. Const., Art. XIII, sec. 1; Ill. Const.,

Art. IX, sec. 1; Mass. Const., Part II, Art. 4; cf. Commonwealth v. Hamilton Mfg. Co., (1866) 12 Allen, 298; Tex. Const., Art. VIII, sec. 1; W. Va. Const., Art. X, sec. 1; cf. Atchison, Topeka, etc., Ry. v. Howe, (1884) 32 Kans. 737; Pullman Palace Car Co. v. State, (1885) 64 Tex. 274; and cf. Travellers' Ins. Co. v. State of Connecticut, (1902) 185 U. S. 364. — <sup>11)</sup> Michigan Central R. Co. v. Powers, (1906) 201 U. S. 245; and cf. Blue Jacket Consolidated Copper Co. v. Scherr, (1901) 50 W. Va. 533. — <sup>12)</sup> Cal. Const., Art. XIII, sec. 1, 6; Ill. Const., Art. IX, sec. 1; La. cf. Const., Art. 228 (but cf. note 14); Pa. Const., Art. IX, sec. 3; Tex. Const., Art. VIII, secs. 1, 4; W. Va. Const., Art. X, sec. 1. — <sup>13)</sup> Cf. Cal., Pa., and Tex., note 12, supra. — <sup>14)</sup> Del. Const., Art. VIII, sec. 1; cf. Tax Law, sec. 4, as amended by 22 Del. Laws, c. 259; La. Const., Arts. 229, 230; cf. N. J. P. L. 1903, c. 208, Art. I, sec. 3. See also Miss. Const., sec. 182; Code of 1906, sec. 4251. — <sup>15)</sup> Cf. People v. New York State Tax Commissioners, (1904) 199 U. S. 1; Cooper Hospital v. City of Camden, (1903) 68 N. J. L. 691. There is no constitutional provision against exemption from taxation in Conn., Del., Me., Mass., Mich., Minn., N. J., N. Y., or Wis.



If a state did not reserve the right to alter, amend, or repeal the charters it grants, the exemption would become part of the contract between the corporation which has organized under it<sup>1)</sup> and the state<sup>2)</sup>. Such absolute grants, however, are not made to-day, and the present charters are everywhere subject to the state's right to alter, amend, or repeal—a right which enables a state to withdraw an exemption at any time<sup>3)</sup>. If corporations possessing an absolute exemption from taxation consolidate so as to dissolve the original incorporation, the new corporation formed takes its charter subject to the constitutional provisions existing at the time of its formation; and if these reserve the right to amend, the new corporation will be subject to that right<sup>4)</sup>. An exemption from taxation has effect of course only in the state which grants it<sup>5)</sup>.

4. DOUBLE TAXATION. — Some states expressly forbid what is known as double taxation<sup>6)</sup>, that is, a taxation of the same property twice in the same state. Some courts hold that a tax on the corporate realty, or personalty, or capital stock, or franchises, together with a tax on the shareholders' stock in the hands of the shareholders, without any deduction from the former tax<sup>7)</sup>, is double taxation<sup>8)</sup>, and within the constitutional prohibition. The United States Supreme Court, however, and the majority of the state courts, hold that this is not double taxation, since the corporation and the shareholders are distinct entities<sup>9)</sup>.

In the absence of an express prohibition on double taxation, the state has the power to impose it<sup>10)</sup>. An intention to do so will not be presumed, and a statute will not be construed to authorize double taxation if any other reasonable interpretation can be given it<sup>11)</sup>. Of course the same property may be taxed by any number of states which can get jurisdiction over it, even in states prohibiting double taxation. The prohibition extends only to double taxation in the same jurisdiction<sup>12)</sup>. It is quite usual for a state to provide for taxation by a state levy for state purposes and county and municipal levies for local purposes. Corporations may therefore pay separate taxes to the state and to the municipality in which they do business. This, though laid on the same property in the same state, is not double taxation, and is a valid exercise of the state taxing power<sup>13)</sup>.

5. TAXATION OF CORPORATE PROPERTY. — a) Tangible Property: What can be Taxed within a State. — The taxation of the property of corporations, including both real property and chattels, is carefully provided for in state legislation everywhere<sup>14)</sup>. Real property is usually expressly made taxable in the local tax

<sup>1)</sup> Cf. *Planters' Ins. Co. v. Tennessee*, (1895) 161 U. S. 193; *Powers v. Detroit*, etc., R. Co., (1905) 201 U. S. 543. — <sup>2)</sup> *Raleigh*, etc., R. Co. v. *Reid*, (1871) 13 Wall. 264 and 269; cf. *Cooper Hospital v. City of Camden*, supra. — <sup>3)</sup> *Tomlinson v. Jessup*, (1871) 15 Wall. 454; *City of New York v. 23rd St. R. Co.*, (1889) 113 N. Y. 311. — <sup>4)</sup> *Northern Central R. Co. v. Maryland*, (1902) 187 U. S. 258; *Rochester R. Co. v. City of Rochester*, (1906) 205 U. S. 236; cf. *Powers v. Detroit*, G. H., and M. R. Co., (1905) 201 U. S. 543. — <sup>5)</sup> *People v. Coleman*, (1892) 135 N. Y. 231. — <sup>6)</sup> Cal. Const., Art. XII, sec. 1, as interpreted in *Burke v. Badlam*, (1881) 57 Cal. 594; Cal. Pol. Code, sec. 3608; cf. *Chesborough v. City*, etc., of *San Francisco*, (1908) 153 Cal. 565; cf. also *Commonwealth v. Westinghouse Electric, etc., Co.*, (1892) 151 Pa. St. 265. — <sup>7)</sup> Cf. *Ryan v. Commissioners*, (1883) 30 Kans. 185. — <sup>8)</sup> *Burke v. Badlam*, (1881) 57 Cal. 594; *Commonwealth v. Fall Brook Co.*, (1893) 156 Pa. St. 488; *Gillespie v. Gaston*, (1887) 67 Tex. 599. — <sup>9)</sup> *Bank of Commerce v. Tennessee*, (1895) 161 U. S. 134, 146; *State v. Travelers' Ins. Co.*, (1902) 70 Conn. 590; *Illinois Natl. Bank v. Kinsella*, (1903) 201 Ill. 31; *Home Assurance Co. v. Assessors*, (1890) 42 La. Ann. 1131; *Second Ward Savings Bank v. Milwaukee*, (1896) 94

Wis. 587; *Pullen v. Corporation Commission*, (1910) 68 Atl. 155 (N. J.). — <sup>10)</sup> *Toll Bridge Co. v. Osborn*, (1868) 35 Conn. 7; *Alderman v. Wells*, (1910) 67 S. E. 781 (S. C.). — <sup>11)</sup> *Tennessee v. Whitworth*, (1886) 117 U. S. 129; *State v. Graybeal*, (1906) 60 W. Va. 357. — <sup>12)</sup> *Sturges v. Carter*, (1884) 114 U. S. 511; *San Francisco v. Fry*, (1883) 63 Cal. 470; *Dyer v. Osborne*, (1876) 11 R. I. 321. — <sup>13)</sup> *W. U. Tel. Co. v. Borough of New Hope*, (1902) 187 U. S. 419; *City of Philadelphia v. Philadelphia Traction Co.*, (1903) 206 Pa. 35. — <sup>14)</sup> Cal. Const., Art. XIII; Pol. Code, sec. 3617, as amended 1909; secs. 3627, 3629, 3638; Conn. Gen. Stats. 1902, secs. 2319, 2328, 2332, 2342, 2343; P. A. 1907, c. 184; P. A. 1905, c. 54; P. A. 1909, c. 7; Del. Gen. L., c. 17; Ill. Rev. Act March 30, 1872, and amendment; La. R. S., sec. 733; Me. R. S., c. 9, secs. 6, 13, 25, 26; Mass. B. C. L., sec. 71, et seq.; cf. L. 1909, c. 490, Part III, sec. 39, et seq.; Mich. C. L. 1897, sec. 3824; Gen. Tax L., secs. 5, 11, 19, 46, 118, 119; Minn. R. L., secs. 794, 835, 838; N. J. C. A., sec. 110; P. L. 1903, c. 208; P. L. 1886, p. 345; P. L. 1902, p. 456; N. Y. Tax L., secs. 7, 11—12; Pa. cf. L. 1891, p. 229; Tex. G. L. of 1907, p. 459; W. Va. Code, c. 29, amended Acts 1905, c. 35; Acts 1907, c. 80; Wis. S., sec. 1033, et seq.



district in which it is situated<sup>1</sup>). Personal property within the state is taxed either at its actual situs or at the principal office of the corporation within the state<sup>2</sup>). Domestic corporations, since they are persons within the jurisdiction and control of the chartering state, are often, under the general language of the statute, taxed upon their personal property situated abroad<sup>3</sup>). Foreign corporations may be taxed, under the general language of the taxing statutes, not only upon real property owned by them within the state but also on chattels situated within the state. Sometimes special provision is made for this in the statute<sup>4</sup>). Statutes often define what shall constitute real estate<sup>5</sup>) and what shall be regarded as tangible personal property having a situs in the state of taxation<sup>6</sup>). Thus taxes may be levied on the income received by a corporation within a jurisdiction<sup>7</sup>). Stocks and bonds and promissory notes are regarded as tangible property in the place in which they are found, being held to be documents of value<sup>8</sup>). Statutes generally expressly include these forms of securities as personal property, taxable at their situs<sup>9</sup>). Many states expressly include money and credits also, and even under general power to tax chattels within a state it is held by the weight of authority that money deposited in a bank for use within a state is tangible property having a situs within a state<sup>10</sup>). A temporary deposit subject to the check of a non-resident is not, however, thus taxable<sup>11</sup>). Chattels to be taxed within a state must have a location there of some degree of permanence. Property which is merely passing through a state is not taxable there<sup>12</sup>). But property sent into a state to be disposed of there may be taxed<sup>13</sup>). If the property is merely temporarily outside the state, to be brought back, it does not thereby lose its situs for taxation<sup>14</sup>). So also where credits are made taxable within a state, if they are in the state for the purpose of reinvestment they are taxable<sup>15</sup>), but not if they are there merely to be collected and remitted to an owner abroad<sup>16</sup>).

b) Intangible Property. What can be taxed within a State. — Property which is strictly speaking intangible can be reached only through jurisdiction over its owner, and therefore the intangible property of a corporation is in control only of the state having jurisdiction of the corporation, — that is the state creating the corporation. This chartering state can tax the corporation on all its property, and does so usually at the public office of the corporation<sup>17</sup>). Some property, however, though intangible may, as has been seen, be held to be situated where its documentary evidence is found, as in the case of bonds, etc. Similarly the goodwill of a business<sup>18</sup>), its franchise<sup>19</sup>), and its business capital which does not exist in the form of tangible property<sup>20</sup>), may be said to have a situs wherever the business is carried on, and may therefore be taxed there.

6. TAXATION OF THE CAPITAL STOCK OF THE CORPORATION. — So far as the capital stock of a corporation is represented by tangible property it will be subject to taxation under property tax laws. But in the case of prosperous corporations the capital of the business as a going concern exceeds in value its tangible property by the goodwill of the business and the value of its franchises. This excess

<sup>1</sup>) See for example *Conn., La., Me., Mich., N. J., N. Y., Tex., Wis.*, *supra*; cf. *Boston Water Power Co. v. City of Boston*, (1845) 9 Metc. 199, and *Amesbury Nail, etc., Co. v. Weed*, (1820) 17 Mass. 53. — <sup>2</sup>) See for example *Cal., Conn., Ill., e., Mich., N. Y., N. J.*, *supra*; cf. *Columbus Southern Ry. Co. v. Wright*, (1894) 151 U. S. 470; cf. *State v. Iverson*, (1909) 122 N. W. 165. — <sup>3</sup>) See for example *Cal., La., Mich., Minn., N. J., Tex., Wis.*, *supra*; cf. *Union Refrigerator, etc., Co. v. Commonwealth*, (1905) 199 U. S. 194. — <sup>4</sup>) See for example *N. Y. Tax Law*, sec. 7; *Cal. Pol. Code*, secs. 3617, 3627; cf. *Metropolitan Life Ins. Co. v. Board of Assessors*, (1905) 15 La. Ann. 698; affirmed, *Same v. City of New Orleans*, (1907) 205 U. S. 395. — <sup>5</sup>) See for example *Cal. Pol. Code*, secs. 3617, 3627. — <sup>6</sup>) See for example *Cal. Pol. Code*, sec. 3617; *L. 1909*. — <sup>7</sup>) *Liverpool Ins. Co. v. Massachusetts*, (1870) 10 Wall. 566. — <sup>8</sup>) *New Orleans v. Stempel*, (1899) 175

U. S. 309; *Western Assurance Co. v. Halliday*, (1901) 110 Fed. 259. — <sup>9</sup>) *Vide supra*, note 5. — <sup>10</sup>) *New Orleans v. Stempel*, (1899) 175 U. S. 309; *Matter of Houdayer*, (1896) 150 N. Y. 37. — <sup>11</sup>) *Clason v. New Orleans*, (1894) 44 La. Ann. 1. — <sup>12</sup>) *Kelley v. Rhoads*, (1902) 188 U. S. 1; *Prairie Oil and Gas Co. v. Ehrhardt*, (1910) 244 Ill. 634. — <sup>13</sup>) *Diamond Match Co. v. Ontonagon*, (1902) 188 U. S. 82; *Standard Oil Co. v. Combs*, (1884) 96 Ind. 179. — <sup>14</sup>) *People v. Feitner*, (1906) 66 N. Y. Supp. 179. — <sup>15</sup>) *New Orleans v. Stempel*, (1899) 175 U. S. 309; *Matzenbaugh v. People*, (1901) 194 Ill. 108. — <sup>16</sup>) *Board of Assessors v. N. Y. Life Ins. Co.*, (1910) 216 U. S. 517; *Reat v. People*, (1903) 201 Ill. 469. — <sup>17</sup>) *Tappan v. Merchants' Natl. Bank, etc.*, (1873) 19 Wall. 490. — <sup>18</sup>) *People v. Roberts*, (1899) 159 N. Y. 70. — <sup>19</sup>) *Oakland Sugar Mill Co. v. Fred W. Wolf Co.*, (1902) 118 Fed. 239. — <sup>20</sup>) *Adams Express Co. State v. Auditor*, (1897) 166 U. S. 185.

is valuable and subject to taxation<sup>1</sup>). Various methods of taxing it have been devised. In some states all the assets of a corporation, intangible as well as tangible, are taxed as a unit<sup>2</sup>). In some the value of the franchises is estimated separately from the other property of the corporation<sup>3</sup>). In many a tax is levied on the capital stock as a whole, at a valuation estimated on the basis of what its shares are worth in the market<sup>4</sup>), or on the corporate excess calculated by subtracting the tangible property from the market value of the capital stock as a whole<sup>5</sup>). These methods, however, are not the only ones which may be employed. Capital stock in the hands of the corporation may be taxed on its par value<sup>6</sup>), or on the amount of dividends that may be declared<sup>7</sup>). Any reasonable method of estimating the value of the capital stock may be employed, and the courts will seek to give effect to the legislative intent<sup>8</sup>).

Where the value of the intangible property has resulted from a business carried on in several states, that part of the property is reasonably held to be taxable in each state which bears the ratio to the whole property of the corporation which the business done within the state bears to the whole business done by the corporation. The prevailing rule of taxation is thus stated by Prof. Beale<sup>9</sup>):

"Wherever a business enterprise exists, in which property situated in several states is used, and the business is carried on in several States, the whole value of the business includes or may include more than the aggregate of the separate articles of property used in it; and this excess may properly be referred not to any one state, but to all of the states in which the business is done. But that part of the value which may be divided among the states is that part only which is equally applicable to all. Fixed tangible property, being referable only to the state in which it is situated, should be deducted from the whole value of the business before dividing the excess; though tangible property which is used throughout the business may be divided with the excess. In the same way if good will is greater in one State than in another, it should be subtracted and separately taxed. The balance, the corporate excess, may properly be divided among the states in the proportion to the amount of business done or capital invested in each."

7. TAXATION OF FRANCHISES. — As has been said in another connection, practically all states impose an organization tax upon corporations formed under their laws<sup>10</sup>). This is a tax upon the privilege of becoming a corporation. In many states an annual franchise tax is levied on all corporations doing business as such within the state<sup>11</sup>). This also is a franchise tax<sup>12</sup>). The franchise which is taxed is, in the language of Justice Field, "the right or privilege given by the state to two or more persons of being a corporation, that is of doing business in a corporate capacity, and not the privilege or franchise which when incorporated the company may exercise". . . "The granting of such right or privilege rests entirely in the discretion of the State, and of course when granted may be accompanied with such conditions as its legislature may judge most befitting to its interests and policy. It may require as a condition of the grant of the franchise, and also of its continued exercise, that the corporation pay a specific sum to the state each month or year, or a specific portion of its gross receipts or of the profits of its business; or a sum to be ascertained in any convenient mode which it may prescribe. The validity of the tax can in no way be dependent on the mode which the state may deem fit to adopt in fixing the amount for any year which it will exact for the franchise."

<sup>1</sup>) *Adams Express Co. v. State Auditor*, (1897) 166 U. S. 185. — <sup>2</sup>) *Mich. Gen. Tax L.*, sec. 11; cf. sec. 19; *Wis. S.*, sec. 1034. *State v. Anderson*, (1895) 90 Wis. 550. — <sup>3</sup>) *Tex. cf. Gen. L.* 1907, pp. 502–508; and cf. *Crocker v. Scott*, (1906) 149 Cal. 575. — <sup>4</sup>) *Mass. B. C. L.*, secs. 72, 74; *N. Y. Tax L.*, sec. 12; *Pa. L.* 1893, p. 353. — <sup>5</sup>) *Ill. Rev. Act of March 30, 1877*, secs. 1–3, as amended *L.* 1905, p. 277; *Minn. R. L.*, sec. 3758; cf. *Spring Valley Water Works v. Schottler*, (1882) 62 Cal. 69. — <sup>6</sup>) *New Orleans, etc., R. Co. v. Board of Assessors*, (1880) 32 La. Ann. 19; cf. *People v. Coleman*, (1891) 126 N. Y. 433. — <sup>7</sup>) *Phoenix Iron Co. v. Commonwealth*,

(1868) 59 Pa. St. 104. — <sup>8</sup>) *Commonwealth v. Mortgage Trust Co.*, (1910) 227 Pa. St. 163. — <sup>9</sup>) *Beale's Foreign Corporations*, sec. 507. — <sup>10</sup>) *Vide supra* II, G. 2. — <sup>11</sup>) *Cal. Stat.* 1905, p. 493, with amendments, *Stats.* 1906, p. 22; *Stats.* 1907, pp. 664, 745; *Stats.* 1909, pp. 454, 458, 459; *Conn. cf. P. A.* 1903, c. 194, sec. 61; *Del. Tax. L.*, secs. 2–19; *Me. R. S.*, c. 8, sec. 18, as amended *P. L.* 1907, c. 185; *Mass. L.* 1909, c. 490, part III, secs. 39–71; *N. J. Tax L.*, as amended *P. L.* 1906, p. 31; *P. L.* 1892, pp. 137–140; *P. L.* 1905, c. 259; *P. L.* 1897, p. 178. — <sup>12</sup>) *New York Terminal Co. v. Gaus*, (1910) 124 N. Y. Supp. 200.

Any reasonable method of arriving at the value of the franchises may be employed by the state<sup>1)</sup>, but a usual method is based on an estimate of the earning capacity of the corporation, e. g. calculated by the dividends paid<sup>2)</sup>, the amount of capital stock employed in the state<sup>3)</sup>, or the gross receipts of the corporation<sup>4)</sup>. The tax is not a property tax even when measured by the amount of property owned by the corporation<sup>5)</sup>. Hence to levy it in addition to the taxes on the property of the corporation is not double taxation<sup>6)</sup>, and a corporation may be taxed on its franchises even though its capital is invested in Federal securities which a state cannot tax<sup>7)</sup>.

8. TAXATION OF SHARES OF STOCK IN THE HANDS OF SHAREHOLDERS. — a) In General. — As has been said, to tax shares in the hands of the shareholders and at the same time to tax the property of the corporation or its capital stock against the corporation, is generally held not to be double taxation. But since the shares of stock get their value for the shareholders from the value of the corporate property, which they represent, a tax on the shares after the property has already been taxed is inequitable as imposing a specially heavy burden on shareholders in corporations. Some states, therefore, expressly prohibit the legislature from taxing both capital stock and shares<sup>8)</sup>. Generally a shareholder in a corporation which has already been taxed on its property by the state is exempt from taxation as an individual on his stock<sup>9)</sup>. This is not a discrimination against shareholders in corporations which have not been taxed on corporate property<sup>10)</sup>. Since the shares held by the shareholders are distinct from the property of the corporation, an exemption of the corporation<sup>11)</sup> or its property<sup>12)</sup> from taxation does not exempt the shares in the hands of the shareholders; and conversely, an exemption of the shares from taxation will not exempt the corporation or its property<sup>13)</sup>.

b) Place of Taxation. — Shares of stock, whether domestic or foreign, may be taxed at the domicile of the owner; and this is the rule in the absence of statute<sup>14)</sup>. But a state may lay a tax upon a foreign shareholder at the place where the corporation has its domicile<sup>15)</sup>. The shareholders are taxable at this place because the foreign shareholder has received from the state the privilege of participation in a franchise it has granted to the corporation<sup>16)</sup>. If the foreign shareholder does not pay the tax, the shares may be seized upon the books of the corporation.

c) Amount of Taxation. — Shares should be taxed at their actual value<sup>17)</sup>. This will usually coincide with the market value, but not necessarily so<sup>18)</sup>.

9. PRIVILEGE TAX ON FOREIGN CORPORATIONS. — Foreign corporations of course do not have to pay the incorporation tax imposed by a state on the corporations it creates<sup>19)</sup>. In order then to prevent foreign corporations from having an advantage over domestic corporations, as well as for other reasons, a tax is imposed by most states on foreign corporations for the privilege of doing business

<sup>1)</sup> *Bank of California v. City of San Francisco*, (1904) 142 Cal. 276; cf. *Monroe Savings Bank v. City of Rochester*, (1867) 37 N. Y. 365. — <sup>2)</sup> *People v. Albany, Ins. Co.*, (1883) 92 N. Y. 458. — <sup>3)</sup> *People v. Williams*, (1910) 198 N. Y. 238; *People v. Knight*, (1903) 173 N. Y. 255. — <sup>4)</sup> *Paterson, etc., Gas Co. v. State Board, etc.*, (1903) 54 Atl. 246 (N. J.). — <sup>5)</sup> *Tremont & Suffolk Mills v. City of Lowell*, (1901) 178 Mass. 469. — <sup>6)</sup> *Western Assurance Co. v. Halliday*, (1903) 127 Fed. 839; *Southern Gam Co. v. Laylin*, (1902) 66 Ohio St. 578. — <sup>7)</sup> *Home Ins. Co. v. New York*, (1890) 134 U. S. 594, affirming *People v. Home Ins. Co.*, (1883) 92 N. Y. 328; and cf. *Honduras Commercial Co. v. Assessors*, (1892) 54 N. J. L. 278. — <sup>8)</sup> Cal. Pol. Code, sec. 3608. — <sup>9)</sup> Conn. P. A. 1907, c. 184; Ill. Rev. Act of March 30, 1877, sec. 3, as amended L. 1905; Mass. L. 1909, c. 490, Part IV, sec. 1; N. Y. L. 1896, c. 908, sec. 4; W. Va. Code, c. 29, sec. 51; Wis. S., sec. 1038. — <sup>10)</sup> *Kidd v. Alabama*, (1903) 188 U. S. 730. —

<sup>11)</sup> *State v. Bank of Commerce*, (1895) 95 Tenn. 221; cf. *New Orleans v. Citizens' Bank*, (1897) 167 U. S. 371. — <sup>12)</sup> *Homo Assurance Co. v. Assessors*, (1890) 42 La. Ann. 1131; but *State v. Wilson*, (1879) 52 Md. 638, contra. — <sup>13)</sup> *Shelby County v. Union, etc., Bank*, (1896) 161 U. S. 149; but *Baltimore v. B. & O. R. R.*, (1848) 6 Gill 288 (Md.), contra; *Canfield v. Los Angeles County*, (1910) 108 Pac. 705 (Cal.). — <sup>14)</sup> *San Francisco v. Flood*, (1884) 64 Cal. 504; *Fahrig v. Milwaukee, etc., Breweries*, (1904) 113 Ill. App. 525; cf. *Tappan v. Merchants' Natl. Bank, etc.*, (1873) 19 Wall. 490, 499. — <sup>15)</sup> *Corry v. City of Baltimore*, (1904) 196 U. S. 466; cf. *Matter of Bronson*, (1896) 150 N. Y. 1. — <sup>16)</sup> *State v. Travelers' Ins. Co.*, (1898) 70 Conn. 590. — <sup>17)</sup> *Whitney v. City of Madison*, (1864) 23 Ind. 331; cf. *Planters', etc., Oil Co. v. Assessor*, (1889) 41 La. Ann. 1137. — <sup>18)</sup> *People v. Coleman*, (1891) 126 N. Y. 433. — <sup>19)</sup> Vide supra, II, G, 2.

within the state boundaries<sup>1</sup>). This may be equal to the organization tax imposed on domestic corporations, and usually is<sup>2</sup>), but it is not necessarily so. It is not unduly discriminatory if it is greater than that ordinarily imposed on domestic corporations<sup>3</sup>), but it must be uniform on all corporations of the same class<sup>4</sup>).

**XV. FOREIGN CORPORATIONS. — A. Introductory**<sup>5</sup>). — It is not unusual for corporators, all of whom are residents of one state, to incorporate in another state which grants such a charter as they seek on more liberal terms than the home state, for the purpose of doing business within that home state<sup>6</sup>). Unless the state in which the incorporators resided prohibited a corporation organized in this way from doing business within its territory<sup>7</sup>) the corporation could do business within the home state upon compliance with whatever conditions the state prescribed to regulate the doing of business by foreign corporations<sup>8</sup>).

**B. Definition.** — A corporation created under the laws of any other state, territory, or country than that in which it seeks to do business is a foreign corporation<sup>9</sup>). Thus a corporation organized in one state of the union would be a foreign corporation in all other states. Statutory definitions, which are quite common, are in general to this effect<sup>10</sup>). Some expressly make corporations organized by the Federal government foreign corporations<sup>11</sup>), and a reasonable construction of many others<sup>12</sup>) would lead to the same conclusion<sup>13</sup>).

**C. Power of a Corporation to Act Outside of the State which Chartered it.** — In the absence of any express restriction imposed by a state upon the powers it grants to a corporation which organizes under its laws, these powers may be exercised, so far as the chartering state is concerned, in any jurisdiction to which the corporation can gain admittance. Some states expressly set this forth in their statutes<sup>14</sup>), and it is not uncommon for corporators to insert a clause in their articles of incorporation stipulating for power to carry on business in other states; but these stipulations are unnecessary. The corporation is presumed to have the power to exercise its charter

<sup>1</sup>) Cal. Const., Art. XII, sec. 15; Civ. Code, sec. 409; Conn. Gen. Stats. 1902, sec. 4811. Del. For. C. L., sec. 1; Ill. G. C. L., sec. 26; Act of May 18, 1905, sec. 3; Me. Pub. L. 1909, c. 113, secs. 1—3; Mass. B. C. L., sec. 91; Mich. P. A. 1907, No. 310, secs. 3—5; Minn. R. L., sec. 2889; N. J. C. A., secs. 101, 114; N. Y. Tax L., sec. 181, Pa. L. 1901, p. 150, sec. 1, and p. 86; Tex. R. S., Art. 2439, as amended Acts 1909, p. 266; W. Va. Code, c. 54, sec. 30; L. 1901, c. 35, sec. 30; Wis. S., 1770c, sec. 4. Cf. N. Y. v. Roberts, (1898) 171 U. S. 658; Attorney Genl. v. Bay State Mining Co., (1868) 99 Mass. 148; People v. Miller, (1910) 197 N. Y. 577. — <sup>2</sup>) So for example in Ala., Cal., Ia., Mich., Wash. —

<sup>3</sup>) Cf. note 1; Georgia R. & Banking Co. v. Wright, (1907) 207 U. S. 127. — <sup>4</sup>) Manchester Fire Ins. Co. v. Herriott, (1899) 91 Fed. 711; State v. Hammond Packing Co., (1903) 110 La. 180; Blue Jacket Consolidated Copper Co. v. Scherr, (1901) 50 W. Va. 533. — <sup>5</sup>) The author of the article is everywhere throughout this section indebted to Professor Beale's work on Foreign Corporations.

<sup>6</sup>) Cf. Seattle Gas & Electric Co. v. Citizens' Light & Power Co., (1903) 123 Fed. 588, 591; and vide supra, II, D. 2. — <sup>7</sup>) Cf. Mo. R. S., secs. 1024, 1026 (L. of 1903, p. 121); but cf. State ex rel Brown, etc., Co. v. Cook, (1904) 181 Mo. 596, and Empire Mills v. Alston Grocery Co., (1891) 15 S. W. 505 (Tex.). — <sup>8</sup>) Demarest v. Flack, (1891) 128 N. Y. 205; Lancaster v. Amsterdam Improvement Co., (1894) 140 N. Y. 576; Oakland Mfg. Co. v. Garst, (1894) 18 R. I. 484. — <sup>9</sup>) Cf. Philippine Sugar Estates, etc., Co. v. United States, (1904) 39 Ct. of Claims 225;

Daly v. National Life Ins. Co., (1878) 64 Ind. 1. — <sup>10</sup>) Ala. Code, sec. 3640; Cal. Const., Art. XII, sec. 15; cf. Civ. Code, sec. 408; Conn. P. A. 1903, c. 194, sec. 80; Del. For. Corp. L., sec. 1; Fla. Laws of 1907, No. 122, p. 230, sec. 7; Ga. Code, sec. 1846; Hawaii R. L. 1905, as amended to 1907, sec. 2623; Ind. Act of 1907, p. 286, sec. 2; Ia. Code, sec. 1637; Ida. R. C. 1909, sec. 2792; Kans. Session Laws 1907, c. 140, sec. 27; La. Const., Art. 242, as amended 1908; Me. P. L. 1909, c. 113, sec. 1; Md. L. 1908, c. 240, sec. 65; Mass. B. C. L., sec. 56; Mich. P. A. 1907, No. 310, sec. 1; Miss. Code 1906, sec. 935; Mont. Code, sec. 4413; Neb. Ann. S., sec. 4137; N. J. C. A., sec. 95; N. M. C. A., sec. 99; N. Y. G. C. L., sec. 20; N. C. R., c. 21, sec. 1193; Okla. R. S. 1903, sec. 1225; R. I. G. L., c. 253, sec. 36; Tex. R. S., Art. 745; Utah Const., Art. XII, sec. 6; Vt. P. S., sec. 27; Wash. Const., Art. XII, sec. 7; cf. Bal. Code, sec. 4291; W. Va. Code, c. 54, sec. 30; Wis. S., 1770c, sec. 1; Wyo. R. S., sec. 3265; L. 1909, c. 93; Alaska: 32 U. S. Stat., c. 978, sec. 225; P. I. C. L., sec. 68, as amended June 29, 1906; Porto Rico, Civ. Code, Title II, c. II, sec. 65. — <sup>11</sup>) Cf. Del. La., N. Y., Porto Rico, supra. —

<sup>12</sup>) Cf. Me., Md., Mass., Miss., Mont., N. J., N. M., Wis., supra; but cf. R. I., supra. —

<sup>13</sup>) Corporations organized by the Federal government as its instrumentalities in carrying out its powers, are not foreign corporations in any state. Cf. Commonwealth v. Texas & Pacific Ry., (1881) 98 Pa. St. 90. — <sup>14</sup>) Cf. for example: Conn. P. A. 1903, c. 194, sec. 4; Del. G. C. L., sec. 2; Me. R. S., c. 47, sec. 68; Md. L. 1908, c. 240, sec. 7 (4); N. Y. cf. G. C. L., sec. 14.

powers in any jurisdiction which consents to admit it<sup>1</sup>). On the other hand, it can exercise there no powers which its charter did not confer upon it<sup>2</sup>). As the Supreme Court of the United States has said<sup>3</sup>), "Wherever a corporation goes for business it carries its charter, as that is the law of its existence . . . Whatever disabilities are placed upon the corporation at home it retains abroad, and whatever legislative control it is subjected to at home must be recognized and submitted to by those who deal with it elsewhere." A state may, however, enact prohibitions upon a domestic corporation's acts within the state itself which it does not intend to apply to these acts in other states. Such a construction has been put upon state usury laws<sup>4</sup>) and statutes of wills<sup>5</sup>).

**D. Right of a Corporation to Act Outside the State which Chartered it. — 1. UNDER THE RULE OF COMITY. — a) Comity in General. —** Although the chartering state confers power on a corporation, the right to exercise them in any other state depends on the laws of this latter state. However, unless a state, by its direct legislative enactment or its declared public policy as exhibited clearly and affirmatively by the general trend of its legislation, has expressed a contrary intention, it will be deemed to be willing that foreign corporations shall exercise their granted powers within its borders<sup>6</sup>), so far at least as they are consistent with the local laws<sup>7</sup>). The common law does not confine the activity of a corporation to the state which created it. As the Supreme Court of Illinois said in a recent case<sup>8</sup>): "By the comity which exists between states, and in the absence of any express law to the contrary, implied permission is granted to a foreign corporation to exercise its corporate powers in a state other than its domicile, provided the exercise of such powers is not repugnant to the policy of the state or prejudicial to its interests." The public policy of the state must be affirmatively declared<sup>9</sup>). A mere absence of a grant of the same power to domestic corporations which the foreign corporation possesses under its charter and seeks to exercise will not, by the weight of authority, establish a public policy in the state opposed to the exercise of this power by the foreign corporation<sup>10</sup>). On the other hand, if the exercise of such power is forbidden directly<sup>11</sup>) or by clear implication<sup>12</sup>) to domestic corporations, this indicates the public policy of the state; and a foreign corporation cannot exercise such powers within its territory.

**b) Limits of Comity. — 1. Corporations Organized in Good Faith. —** Under the rule of comity, while a state in the absence of express limitation is presumed to admit corporations organized in good faith in other states, it is not bound to admit those organized there merely for the purpose of evading the local laws<sup>13</sup>), or otherwise in bad faith. Citizens of a state may obtain in a second state a charter to do business in their home state which under the rule of comity will be recognized there<sup>14</sup>). A state may in good faith grant a charter to a corporation to do business in other states even where the applicants do not contemplate carrying on any business within the chartering state<sup>15</sup>). But a corporation organized by a state and given power to do business in other states, but denied any power to do business within the chartering state itself, is held not entitled to admission, under the rules of comity, to another state<sup>16</sup>).

<sup>1</sup>) Cf. *Fritts v. Palmer*, (1889) 132 U. S. 282; *American Water Works Co. v. Farmers' Loan & Trust Co.*, (1896) 73 Fed. 956. — <sup>2</sup>) *Seattle Gas & Electric Co. v. Citizens' Light & Power Co.*, (1903) 123 Fed. 588; cf. *White v. Howard*, (1871) 38 Conn. 342; *Starkweather v. American Bible Society*, (1874) 72 Ill. 50; cf. also Ill. Act. of May 18, 1905, § 2; Ga. Code, § 1850; Mo. R. S., § 1316, as amended by L. 1907. — <sup>3</sup>) *Waite, C. J.*, in *Canada Southern Ry. Co. v. Gebhard*, (1883) 109 U. S. 327. — <sup>4</sup>) *United States Mortgage Co. v. Sperry*, (1891) 138 U. S. 313; *Bard v. Peele*, (1855) 12 N. Y. 495. — <sup>5</sup>) *White v. Howard*, (1871) 38 Conn. 342; but cf. *Kerr v. Dougherty*, (1880) 79 N. Y. 327. — <sup>6</sup>) *Bank of Augusta v. Earle*, (1839) 13 Pet. 519; *American Foreign Christian Union v. Yount*, (1879) 101 U. S. 356; *American, etc., Wireless Telegraph Co. v. Superior Court*, (1908) 153 Cal.

533. — <sup>7</sup>) Vide infra, XII, D, 2. — <sup>8</sup>) *Alpena Portland Cement Co. v. Jenkins & Reynolds Co.*, (1910) 244 Ill. 354, 358. — <sup>9</sup>) Cf. *United States Fidelity & Guaranty Co. v. Linehan*, (1904) 73 N. H. 41. — <sup>10</sup>) Cf. *Cowell v. Colorado Springs Co.*, (1879) 100 U. S. 55; *Stevens v. Pratt*, (1882) 101 Ill. 206. — <sup>11</sup>) Cf. *In re Preme's Estate*, (1893) 136 N. Y. 347, 362, and *Floyd v. National Loan, etc., Co.*, (1901) 49 W. Va. 327. — <sup>12</sup>) *A. Booth & Co. v. Weigand*, (1904) 79 Pac. 570 (Utah); *Ormes v. Dauchy*, (1880) 82 N. Y. 443. — <sup>13</sup>) Cf. *Empire Mills v. Alston Grocery Co.*, (1891) 15 S. W. 505 (Tex.). — <sup>14</sup>) Vide XV, A, note 8. — <sup>15</sup>) *Missouri Lead, etc., Co. v. Reinhard*, (1893) 114 Mo. 218; *State v. Taylor*, (1874) 25 Ohio State 279. — <sup>16</sup>) *Cumberland Telephone, etc., Co. v. Louisville Home T. Co.*, (1903) 72 S. W. 4 (Ky.), and cf. *Land Grant Ry. v. Coffey County*, (1870) 6 Kas. 245.

2. Rights of a Foreign Corporation under the Law of the State into which it is Admitted. — Not only is a foreign corporation subject to the law of its charter; it is also subject, as to all acts done within the state, to the local law of the state which admits it to do business within its borders<sup>1)</sup>, so far as this law is applicable to corporations generally<sup>2)</sup>, or to foreign corporations specifically<sup>3)</sup>. Statutes regulating the internal affairs of corporations are construed as being intended to apply to domestic corporations only<sup>4)</sup>. The rule of comity does not require a state to grant a foreign corporation permission to carry on business on terms more favorable than those it grants to domestic corporations<sup>5)</sup>, and states are indeed frequently forbidden by constitutional provision or statute to do so<sup>6)</sup>.

2. UNDER STATUTORY RESTRICTIONS. — a) *Power to Exclude or to Impose Restrictions upon Foreign Corporations Seeking Admittance.* — 1. In General. — On the other hand a state has, except so far as limited by the express provisions of the Federal Constitution, absolute power at its discretion to exclude or expel a foreign corporation from its territory<sup>7)</sup>. And since it can exclude absolutely it may prescribe, subject again to the same limitation<sup>8)</sup>, any terms for admission<sup>9)</sup>, and also any terms on which a corporation seeking admission may be permitted to continue to do business after admission is granted it<sup>10)</sup>. The state can revoke the license it has granted the foreign corporation if the terms have been violated by the corporation<sup>11)</sup>.

2. Constitutional Limitations on the Power of a State to impose Restrictions on Foreign Corporations. — a) In General. — Congress is given by the Federal Constitution a power over interstate and foreign commerce which has been decided to be exclusive<sup>12)</sup>, and states cannot interfere with this control by legislation directed against foreign corporations engaged in carrying on interstate commerce across their boundary lines<sup>13)</sup>. While the prohibition against state interference applies most obviously to interference with public service corporations, it applies also to interference with commerce carried on by purely manufacturing or trading corporations, for example a corporation chartered in one state and selling goods through its representative in a second state to be shipped into it from the first<sup>14)</sup>.

b) Rights of a State over Corporations Engaged in Interstate Commerce: Taxation. Police Power. — The constitutional prohibition against interference by a state with interstate or foreign commerce does not prevent a state from taxing corporations, foreign or domestic, engaged in this commerce<sup>15)</sup>. Property of such corporations situated within a state<sup>16)</sup>, even if this property is directly used in interstate commerce<sup>17)</sup>, may be taxed for public purposes like any other property within the state<sup>18)</sup>. Even goods brought from one state into a second may be taxed by the latter after they have become a part of the general mass of property within the state<sup>19)</sup>, and if they are not taxed in such a way as would discriminate between such goods and those produced within the state<sup>20)</sup>. Moreover, a corporation engaged in

<sup>1)</sup> In re Consolidated Rendering Co., (1908) 207 U. S. 541. — State v. Standard Oil Co., (1906) 194 Mo. 124; and cf. Natl. Building & Loan Assn. v. Braham, (1904) 193 U. S. 635. — <sup>2)</sup> London, Paris, etc., Bank v. Aronstein, (1902) 117 Fed. 601; Bishop v. American, etc., Co., (1895) 157 Ill. 284. — <sup>3)</sup> People v. Howard, (1883) 50 Mich. 239. — <sup>4)</sup> Vide infra, XV, G. 2; Saltmarsh v. Spaulding (1888) 147 Mass. 224. — <sup>5)</sup> Coler v. Tacoma R. & Power Co., (1903) 65 N. J. Eq. 347. — <sup>6)</sup> Cal. Const., Art. XII, sec. 15; Ill. Act. of May 18, 1905, sec. 2; Me. P. L. 1909, c. 113, sec. 4; Md. Code, Art. 23, sec. 66; Mass. B. C. L., secs. 57, 61; Mich. P. A. 1907, No. 310, sec. 4; Minn. R. S., sec. 1316, as amended by L. 1907; N. J. cf. C. A., sec. 97; N. Y. G. C. L., sec. 15; Ohio G. C., sec. 178; Pa. cf. L. 1903, p. 89; L. 1901, p. 86; Wash. Const., Art. XII, sec. 7; 1 Bal. Code, sec. 4291; P. I. cf. C. L. 73. — <sup>7)</sup> Waters-Pierce Oil Co. v. Texas, (1900) 177 U. S. 28; cf. LaMoine Lumber Co. v. Kesterton, (1909) 171 Fed. 980; Seaboard Air Line Ry. Co. v. Commissioners of Alabama, (1907) 155 Fed. 792. — <sup>8)</sup> Blake v. McClung, (1898)

172 U. S. 239. — <sup>9)</sup> Lehigh Portland Cement Co. v. McLean, (1910) 245 Ill. 326; Stone v. Penn Yan, etc., Ry., (1910) 197 N. Y. 279. — <sup>10)</sup> Cf. Paul v. Virginia, (1868) 8 Wall. 168, 181. — <sup>11)</sup> Waters-Pierce Oil Co. v. Texas, supra; State v. Standard Oil Co., (1900) 61 Nebr. 28. — <sup>12)</sup> Gloucester Ferry Co. v. Pa., (1884) 114 U. S. 196; La Moine Lumber Co. v. Kesterton, supra. — <sup>13)</sup> International Text Book Co. v. Pigg, (1910) 217 U. S. 91; cf. Attorney General v. Electric Storage & Battery Co., (1895) 188 Mass. 239. — <sup>14)</sup> Caldwell v. North Carolina, (1902) 187 U. S. 622; Kirven v. Virginia-Carolina Chemical Co., (1906) 145 Fed. 288, 293. — <sup>15)</sup> Anglo California Bank v. Field, (1905) 146 Cal. 644. State v. Canada Cattle Car Co., (1902) 85 Minn. 457. — <sup>16)</sup> Cf. Pullman Co. v. State of Kansas, (1910) 216 U. S. 56. — <sup>17)</sup> People v. Knight, (1902) 171 N. Y. 354. — <sup>18)</sup> Atlantic & Pacific Tel. Co. v. Philadelphia, (1902) 190 U. S. 160. — <sup>19)</sup> Brown v. Houston, (1884) 114 U. S. 622; American S. & W. Co. v. Speed, (1903) 192 U. S. 500. — <sup>20)</sup> Pittsburg, etc., Coal Co. v. Bates, (1894) 156 U. S. 577.

interstate commerce may be taxed on the value of its franchises, as property, and on any other intangible property it may possess within the jurisdiction<sup>1</sup>), or any special services rendered<sup>2</sup>) or privileges granted to it by the state<sup>3</sup>). Moreover, in the exercise of its police power a state may interfere with interstate or foreign commerce so far as is necessary for the securing of the peace, safety, health, or morals of its people<sup>4</sup>).

c) Power to Control the Bringing of Suits in Federal Courts by Foreign Corporations. — A foreign corporation has the right under the Constitution, upon compliance with the Judiciary Act of 1789, to have suits between it and citizens of the state taken into the Federal courts. This makes the foreign corporation less amenable to state control than domestic corporations, and many states have attempted to prevent foreign corporations doing business within their territory from removing cases from the state into the Federal courts, by compelling such corporations as a condition of admittance into the state to agree not to transfer cases between them and citizens of the state into the Federal courts<sup>5</sup>). It has been well established that such agreements are not binding on the corporation<sup>6</sup>). On the other hand, a state may refuse to a corporation which has resorted to the Federal courts the privilege of continuing to do business in the state<sup>7</sup>). In the words of Justice Peckham<sup>8</sup>): "The mere enactment of a statute which in substance says if you choose to exercise your right to remove your case into a Federal court, your right to do further business within the state shall cease and your permit shall be withdrawn, is not open to any constitutional objection."

d) Foreign Corporations as Entitled to the Privileges and Immunities of Citizens. — A corporation is not a citizen within Art. IV, clause 2, of the Federal Constitution, guaranteeing to the citizens of each state the privileges and immunities of citizens in the several states<sup>9</sup>). Privileges which a foreign corporation has in the state which chartered it can be carried into another state only with the consent of the latter<sup>10</sup>).

e) Foreign Corporations as Entitled to the Equal Protection of the Laws. — A foreign corporation becomes entitled, under the Fourteenth Amendment to the Federal Constitution, to the equal protection of the laws of a state only after it has been admitted to the jurisdiction<sup>11</sup>). The guarantee of the Fourteenth Amendment is against a denial by the state to any person within its jurisdiction of the equal protection of the laws. While the corporation is a person within this amendment<sup>12</sup>), it does not come within the amendment until it comes within the jurisdiction of the state under its permission to act within its territory<sup>13</sup>). Hence a state is not prohibited by the Fourteenth Amendment from imposing conditions upon the admission of foreign corporations which amount to a discrimination against them in favor of domestic corporations. "The state is not prohibited from discriminating in the privileges it may grant to foreign corporations as a condition of their doing business or hiring offices within its limits, provided always such discrimination does not interfere with any transaction by such corporations of interstate or foreign commerce." The Amendment does, however, prevent such discrimination after a foreign corporation has complied with conditions imposed by the state on admission and is complying with those under which it is allowed to carry on business<sup>14</sup>).

<sup>1</sup>) *Atlantic & Pacific Tel. Co. v. Philadelphia*, (1902) 190 U. S. 160; *Adams Express Co. v. Ohio State Auditor*, (1897) 165 U. S. 194; *Oakland Sugar Mill Co. v. Fred W. Wolf Co.*, (1902) 118 Fed. 239. — <sup>2</sup>) *Western Union Tel. Co. v. New Hope*, (1902) 187 U. S. 419. — <sup>3</sup>) *Ashley v. Ryan*, (1893) 153 U. S. 436. — <sup>4</sup>) *State v. Creamery Package Mfg. Co.*, (1910) 110 Minn. 415, 432; *State ex inf. Hadley v. Standard Oil Co.*, (1909) 218 Mo. 1. — <sup>5</sup>) *Porto Rico Civ. Code*, Title II, c. 11; *W. Va. cf. Code*, c. 54, sec. 30; amended 1901 Acts, 35. — <sup>6</sup>) *Ins. Co. v. Morse*, (1874) 20 Wall. 445; *Barling v. Bank of British North America*, (1892) 50 Fed. 260. <sup>7</sup>) *Ala. Code*, sec. 3654; *La. Constl. Amendment*, Apr. 21, 1908; *Ore. cf. B. & C.*, sec. 5120; *Wis. S.*, sec. 1770f; *L. 1901*; *L. 1905*, p. 937. *Security Mutual Life Ins. Co. v. Prew-*

*itt*, (1905) 202 U. S. 246; *Doyle v. Continental Ins. Co.*, (1876) 94 U. S. 535; *State v. Louisville & N. R. Co.*, (1910) 51 So. 918. — <sup>8</sup>) *Security Mutual Life Ins. Co. v. Prewitt*, *supra*. — <sup>9</sup>) *Anglo-American Provision Co. v. Davis Provision Co.*, (1903) 191 U. S. 373. — <sup>10</sup>) *Cf. Paul v. Virginia*, (1868) 8 Wall. 168, 180. — <sup>11</sup>) *Pembina Consolidated Silver Mining, etc., Co. v. Pennsylvania*, (1887) 125 U. S. 181; *cf. Southern Ry. Co. v. Greene*, (1910) 216 U. S. 400, 413. — <sup>12</sup>) *Pembina Consolidated Silver Mining, etc., Co. v. Pennsylvania*, *supra*; *Smyth v. Ames*, (1897), 69 U. S. 466. — <sup>13</sup>) *Cf. Kirven v. Virginia-Carolina Chemical Co.*, (1906) 145 Fed. 288. — <sup>14</sup>) *Southern Ry. Co. v. Greene*, (1910) 216 U. S. 400; *Black v. Caldwell*, (1897) 83 Fed. 880; *State v. Cadigan*, (1901) 73 Vt. 245.



f) *State Laws Affecting the Obligation of Contracts with a Foreign Corporation.* — By admitting a foreign corporation into state territory on its compliance with certain conditions, a state impliedly agrees to allow a corporation to enjoy the privileges thus obtained unburdened with further conditions not prescribed at the time at which it was admitted, except such as the state in the exercise of its police powers, for the purpose of taxation, and for other public objects, may legally impose in respect to business carried on and property situate within its limits<sup>1</sup>). Hence when a statute prescribed that on compliance with certain conditions a foreign corporation should be entitled to do business within a state and be subject to the liabilities of and limitations placed upon domestic corporations, a foreign corporation which had complied with these conditions could not be subjected to a subsequently enacted statute imposing a higher annual license fee on foreign than on domestic corporations<sup>2</sup>).

The prohibition of the Federal Constitution applies also to the passing of a state law which affects the validity of a contract between the foreign corporation and a third party<sup>3</sup>).

b) *Admittance on Compliance with Prescribed Terms.* — 1. In General. — No state has exercised its undoubted right to exclude all foreign corporations not protected by provisions of the Federal Constitution from its action; but from time to time certain states have absolutely excluded some classes of corporations. Some statutory regulation prescribing terms with which a foreign corporation must comply to be entitled to do business within the state is, however, universal. It is justified by the necessity of securing the rights of citizens of the state who may deal with the corporation, and of preventing the foreign corporation, organized possibly under an incorporation law more favorable to it, from gaining an advantage over domestic corporations<sup>4</sup>) through such means as the exercise of powers not granted to the latter, the escaping of taxes imposed on the latter—e. g. the organization tax—, the avoidance of service of process within the state, the avoidance of state inspection, and regulations imposed on domestic corporations.

2. *Statutory Prescriptions.* — a) *Filing Information.* — State statutes prescribe in detail what a foreign corporation must do to obtain permission from a state to carry on business within its territory. The statutes differ widely in detail, but have a general similarity of outline. The first step to be taken is usually the filing within a specified time and with a specified state official or officials — generally the Secretary of State — certain information regarded as likely to be of value to persons who may deal with the corporation<sup>5</sup>). The things to be filed are: a copy of the corporate charter or articles of incorporation, as obtained from the chartering state; a statement giving the financial condition of the corporation, including its capital stock and indebtedness; a statement as to the name of the corporation, its principal place of business in the home state, the location of its principal and often of all its places of business within the local state, and the name and address or other designation of a representative of the corporation within the state, service of legal process upon whom will be binding on the corporation. Provision is generally made for the authentication of all the information which must be filed.

<sup>1</sup>) N. Y., L. E., & W. R. R. v. Pennsylvania, (1893) 153 U. S. 628, per Harlan, J. — <sup>2</sup>) American Smelting & Refining Co. v. Colorado, (1907) 204 U. S. 103; British-American Mtg. Co. v. Jones, (1897) 56 S. E. 983; but cf. Diamond Glue Co. v. United States Glue Co., (1902) 187 U. S. 611; Manchester F. I. Co. v. Herriott, (1899) 91 Fed. 711; State v. Louisville & N. R. Co., (1910) 51 So. 918 (Miss.). — <sup>3</sup>) Bedford v. Eastern Building & Loan Assn., (1901) 181 U. S. 227; State Tax on Foreign-Held Bonds, (1872) 15 Wall. 300. — <sup>4</sup>) Cf. A. H. Woods Production Co. v. Chicago, etc., R. Co., (1909) 147 Ill. App. 568. — <sup>5</sup>) Ala. Const., sec. 232; Code secs. 3642, 3648; Cal. Civ. Code, secs. 405, 408, as amended by Act of March 18, 1907; Conn. P. A. 1903, c. 194, secs. 82, 83; P. A. 1907, c. 60; Del. Const., Art. IX., sec. 5; For. Corp. L., sec. 1; Ga. L. 1909, p. 143, sec. 1; Hawaii R. L., sec. 2623; Act 43 of 1909; Ill. Act of May 18, 1905; Act

of Feb. 16, 1865; La. Const., Art. 264; Act 54 of 1904, sec. 1, as amended 1908, and sec. 2; Me. Pub. L. 1909, c. 113, secs. 1, 3, 5, 9; Md. L. 1908, c. 240, secs. 67, 68; Mass. B. C. L., secs. 58, 60; Mich. P. A. 1907, No. 310, sec. 1; Minn. R. L., secs. 2888, 2889; Mo. R. S., secs. 1024 a, 1025, 1316; N. J. C. A., sec. 97; N. Y. G. C. L., secs. 15, 16; Ohio Gen. Code, 1910, secs. 178—179, 183; Ore. L. 1903, p. 44, sec. 6; p. 47, sec. 7; Pa. Const., Art. XVI, sec. 6; L. 1874, p. 108, secs. 1—3; R. I. G. L., c. 253, secs. 37—41; Tex. R. S., Art. 642, subd. 56, as amended 1901; R. S. Arts. 745, 749; Va. Code, sec. 1104; L. 1903, p. 360; Wash. 1 Bal. Code, secs. 4292, 4293, as amended L. 1909, p. 72; W. Va. Code, c. 54, sec. 30; amended 1901 Acts. 36; Wis. S., secs. 1770c, 1770h; Alaska 32 U. S. Stats., c. 978, secs. 225—227; P. I. C. L., secs. 68, 70, 72; Porto Rico Civ. Code, Title II, sec. 52.



b) Obtaining State License. Fees and License Tax. — The filing of the required information must be followed by the obtaining of a certificate from the Secretary of State or other designated official, the possession of which will be evidence of the permission of the state to do business<sup>1</sup>). Many statutes prescribe the payment of a special filing fee in this connection<sup>2</sup>); and most states impose upon the corporation as a further prerequisite the payment of a charter or license fee for the privilege of admission to the state<sup>3</sup>). This fee is to be distinguished from the annual license or franchise tax which may be and frequently is imposed in addition to all the fees just mentioned<sup>4</sup>).

3. What Corporations are Affected by the Terms of the Statutes — Meaning of "Doing Business." — The necessity of the regulation of foreign corporations by a state applies only to foreign corporations which come into competition with domestic corporations or individual citizens. Hence the statutory regulations are made applicable only to foreign corporations doing business within the state; and since a statute should be construed in favor of its constitutionality if possible, the regulations are not deemed applicable to acts of interstate or foreign commerce<sup>5</sup>). Doing business means prosecuting or at least initiating a course of business transactions<sup>6</sup>). A single act of business with no intention on the part of the corporation to follow it with further acts will not be regarded as coming within the purpose of the statutory restrictions<sup>7</sup>). But the very inception of any contemplated course of business transactions, even if prosecuted no farther than the first act, is a doing of business<sup>8</sup>). Business is done only where the principal act involved in a transaction takes place. Hence a soliciting of orders in a state in such a way that the contract is not consummated except at the home office of the foreign corporation in a second state is generally held not to be doing business by the foreign corporation in the first state<sup>9</sup>). If, however, the business is carried on through a permanent agent who has power himself to make contracts for the corporation, it is doing business within the state<sup>10</sup>). The business contemplated must be the ordinary business of the

1) Ala. Code, secs. 3651 to 3653; Cal. Civ. Code, sec. 408; Del. For. Corp. L., sec. 1; Ga. cf. L. 1909, p. 143, sec. 1; Ill. Act of May 18, 1905, sec. 2; Me. cf. Pub. L., c. 113, sec. 1; Md. L. 1908, c. 240, sec. 68; Mass. cf. B. C. L., sec. 58; Mich. P. A. 1907, No. 310, secs. 1, 4, 6; Minn. R. L., sec. 2889; Mo. R. S., sec. 1316, amended L. 1907; N. J. C. A., sec. 97; N. Y. G. C. L., sec. 15; Ohio Gen. Code, sec. 178; Ore. L. 1903, p. 47, sec. 7; Pa. L. 1874, p. 108, sec. 2; Tex. R. S., Arts. 745, 748; Va. L. 1903, p. 360; W. Va. Code, c. 54, sec. 30; amended 1901 Acts, 35; Wis. S., sec. 1770c, subd. 4; P. I. C. L., sec. 68, as amended 1906.

— 2) Cal. Civ. Code, secs. 408, 409; Conn. cf. Gen. Stats 1902, sec. 4811; F. C. L., secs. 1, 3; Me. cf. Pub. L., c. 113, sec. 1; Md. cf. L. 1908, c. 240, sec. 68; Mass. B. C. L., sec. 91; Mich. P. A. 1907, No. 310, sec. 5; N. J. cf. C. A., sec. 101; Ohio Gen. Code, sec. 180; Ore. L. 1903, p. 47, sec. 7; B. & C., 5113; Va. L. 1903, p. 360; Wash. L. 1907, p. 270, sec. 1; Wis. S., sec. 1770c, subds. 5, 7. In many states the filing fees are not provided for in incorporation statutes, but under acts not here enumerated. — 3) Ala. Code, secs. 3647, 3649; Del. F. C. L., sec. 1; Hawaii R. L., sec. 2624; Ill. Act of May 18, 1905, sec. 3; Md. L. 1908, c. 240, sec. 68; Mich. P. A. 1907, No. 310, sec. 3; Minn. R. L., sec. 2889; Mo. R. S., sec. 1025; N. J. cf. C. A., sec. 101, and Texas Co. v. Dickinson, (1910) 75 Atl. 803 (N. J. Sup.); N. Y. Tax L., sec. 181; Ohio Gen. Code, sec. 184; Ore. cf. B. & C., sec. 5112; Pa. L. 1901, p. 150, sec. 1; Tex. R. S., Art. 2439, as amended Acts 1909, p. 266; Va. L. 1903, p. 179; Wis. S., sec. 1770c, subd. 7. — 4) Ala. Code,

secs. 2391, 2400; Cal. Stats. 1905, p. 493, as amended to 1909; Del. Tax L., secs. 2—17; Ga. L. 1909, p. 48, sec. 2, subds. 31, 32; Hawaii R. L., sec. 2625; amended Act 61 of 1909; Me. R. S., c. 8, sec. 18; Md. L. 1908, c. 240, secs. 70, 71; Mass. B. C. L., secs. 54—56; N. J. cf. C. A., sec. 101; N. Y. Tax L., secs. 182, 192—196; Ohio L. 1910, sec. 87; Ore. L. 1905, p. 375, secs. 1—3; Tex. G. L., Session of 1907, pp. 202—208, secs. 2, 3, et seq.; Va. L. 1903, p. 180, sec. 41, as amended by L. 1908, c. 227; Wash. L. 1907, p. 271; W. Va. Code, c. 32, secs. 130, 131; 1905 Acts, 36, sec. 131. — 5) Vide supra, XV, D, 2, a, 2, b; and Blakeslee Mfg. Co. v. Hilton, (1897) 5 Pa. Super. Ct. 184. — 6) Cooper Mfg. Co. v. Ferguson, (1885) 113 U. S. 727; and cases in note 3. supra. — 7) General Conference, etc., v. Berkeley, (1909) 156 Cal. 466; Alpena Portland Cement Co. v. Jenkins & Reynolds Co., (1910) 244 Ill. 354; Penn. etc., Co. v. McKeever, (1905) 183 N. Y. 98; cf. Ammons v. Brunswick-Balke-Callender Co., (1905) 141 Fed. 70. — 8) John Deere, etc., Co. v. Wyland, (1904) 69 Kans. 255; International, etc., Co. v. Lynch, (1908) 69 Atl. 541 (Vt.). — 9) Holder v. Aultman, Miller & Co., (1898) 169 U. S. 81; Wm. Grace Co. v. Henry Martin Brick, etc., Mfg. Co., (1909) 174 Fed. 131; System Co. v. Advertisers' Cyclopedic Co., (1910) 121 N. Y. Supp. 611; but cf. State v. Lemp Brewing Co., (1909) 79 Kans. 705; and cf. also State v. Bristol Savings Bank, (1895) 108 Ala. 275. — 10) Irons v. Simcon & George Rogers, (1908) 166 Fed. 781; cf. United States v. American Bell Tel. Co., (1886) 29 Fed. 17.

corporation<sup>1</sup>). Bringing an action is not doing business<sup>2</sup>). In particular cases where the facts are in doubt, the question whether a given act is a doing of business within the meaning of the statute may be left to the jury<sup>3</sup>).

**E. Action in other than the Chartering State. — 1. DOING BUSINESS. —**  
*a) Effect of Compliance with Terms of Admittance.* — A foreign corporation which has fulfilled the statutory requirements for admission to a state has a right to a license to do business within the state<sup>4</sup>). It has then all the rights which it would have had under the rule of comity in the absence of any statute. In other words, it can exercise the powers granted it from the state from which it obtained its charter, so far as the exercise of these powers is not limited by its duty of obedience to the local law of the state to which it has obtained admittance<sup>5</sup>).

*b) Effect of Non-Compliance with Terms.* — 1. Penalties. — Statutes differ widely as to the legal consequences of non-compliance by foreign corporations with the statutory prerequisites for doing business within a state<sup>6</sup>). In most states, however, some fine is imposed upon the corporation which does business, or its act is made a misdemeanor<sup>7</sup>). Frequently, also, the act of the agent who undertook to do business on behalf of the corporation is made a misdemeanor, punishable by fine or imprisonment; or he is made personally liable for the fine imposed on the corporation<sup>8</sup>). A compliance with the statute after the unauthorized doing of business will not absolve the corporation<sup>9</sup>) or the agent<sup>10</sup>) from the penalty fixed by the statute. In many states some designated state officer has the duty of enforcing the penalties by proper proceedings in the courts. Even in the absence of such a provision a state prosecuting officer can bring proceedings to enforce the law, and the state can by quo warranto inquire into the wrongful exercise of corporate powers by the foreign corporation<sup>11</sup>).

2. Effect on Contracts made on Behalf of the Corporation. — Many statutes today are specific in their provisions as to the effect of non-compliance by a foreign corporation on contracts made on its behalf within the state. A few statutes expressly declare such contracts void<sup>12</sup>), and some others are so worded as clearly to imply this<sup>13</sup>). Some states declare the contracts to be voidable at the election of the party contracting with the foreign corporation<sup>14</sup>). On the other hand, some statutes expressly declare the contract valid<sup>15</sup>), but suspend any remedy upon it until the corporation complies with the statute, or treat the fine imposed by the statute as the sole penalty upon the corporation for non-compliance. Probably the majority of statutes deny the foreign corporation the right to maintain an action to enforce the contract or recover for its breach until the statute has been complied with<sup>16</sup>).

1) Cf. *Honeyman v. Col. Fuel & Iron Co.*, (1904) 133 Fed. 96; *Singer Mfg. Co. v. Granite Spring Water Co.*, (1910) 123 N. Y. Supp. 1088; *N. Y., etc., Co. v. Winton*, (1904) 208 Pa. St. 467. — 2) *Alpena Portland Cement Co. v. Jenkins & Reynolds Co.*, supra; *Lilly-Brackett Co. v. Sonneman*, (1903) 50 Wash. 487. — 3) *Commonwealth v. Read Phosphate Co.*, (1902) 113 Ky. 32; *Chicago, R. I., etc., R. v. Neil P. Anderson & Co.*, (1910) 130 S. W. 182 (Tex. Civ. App.). — 4) *Bankers' Life Ins. C. v. Howland*, (1901) 73 Vt. 1. — 5) Vide supra, XV, D, 1, b, 2 and XV, D, 2. — 6) Ala. Code, secs. 3644—3646, 3649, 6628—9; Cal. Civ. Code, sec. 410; Conn. P. A. 1903, c. 194, sec. 85; Del. For. Corp. L., sec. 6; and cf. Tax L., sec. 9; Ga. Code, sec. 1848; Ill. Act of May 18, 1905, sec. 6; Me. Pub. L. 1909, c. 113, sec. 7; Md. Corp. L., sec. 69; Mass. B. C. L., secs. 60, 68; Mich. P. A. 1907, No. 310, secs. 6, 7; Minn. R. L., sec. 2890; Mo. R. S., sec. 1026; N. J. C. A., secs. 98, 100, and cf. sec. 101; N. Y. G. C. L., secs. 15, 16; Ohio G. C., secs. 182, 186, 187; Ore. L. 1903, p. 48, secs. 8, 10; Pa. L. 1874, p. 108, sec. 3; R. I. G. L., c. 253, secs. 36, 41; Tex. R. S., Art. 746; Va. Code, sec. 1105; L. 1903, p. 61; Wash. 1 Bal. Code, sec. 4298c; L. 1909, p. 1011, sec. 4293a; W. Va. Code, c. 54, sec. 30; amended 1901 Acts, 35; Wis. S., sec. 1770b, subds. 10, 11; Alaska 32

U. S. Stats., c. 978, sec. 228; Hawaii R. L., sec. 2626; P. I. C. L., sec. 69; Porto Rico Civ. Code, Title II, c. II, sec. 68. — 7) Vide Ala., Cal., Del., Ill., Me., Minn., Mo., N. J., Ohio, Va., Wash., W. Va., Wis., Alaska, P. I., Porto Rico, note 6, supra. — 8) Vide Ala., Conn., Del., Md., Mass., Mich., Ohio, Pa., R. I. and cf. Va., Wash., Wis., P. I., note 6, supra. — 9) State ex rel. *Nelson v. S. P. Pond Co.*, (1909) 115 S. W. 505. — 10) Cf. *Vorys v. State*, (1902) 67 Ohio St. 15. — 11) *State v. Kansas, etc., Co.*, (1905) 71 Kans. 785; *Attorney General v. A. Booth & Co.*, (1906) 143 Mich. 89; and cf. *State v. Virginia* — Carolina, etc., (1905) 71 S. C. 544. — 12) Vide Del., Ga., note 6, XV, E, b; and cf. *Model Heating Co. v. Ill. Magarity*, (1910) 75 Atl. 514 (Del.). — 13) Vide Mich., Pa., Tex., note 10, XV, E, b; f. *Buffalo Refrigerating, etc., Co. v. Penn Heat & Power Co.*, (1910) 178 Fed. 696 (Pa. statute); *United Lead Co. v. T. W. Reedy Elevator Mfg. Co.*, (1906) 222 Ill. 199. — 14) Vide Ala., Wis., Alaska, note 6, XV, E, b; cf. *Alabama Western R. Co. v. Tilley-Bates Construction Co.*, (1909) 50 S. W. 341 (Ala.); *Duluth Music Co. v. Clancy*, (1909) 120 N. W. 854; but cf. *Ames v. Kruzner*, (1902) 1 Alaska 598. — 15) Vide Conn., Md., Mass., note 6, XV, E, b. — 16) Vide Cal., Md., Mass., Minn., and cf. Mo., N. J., Ore., R. I., Hawaii, P. I., note 6, XV, E, b.

Where the language of the statute is clear it must of course be followed; but some statutes are silent on the point<sup>1)</sup>, and the language of some is susceptible of different interpretations<sup>2)</sup>. In these cases the decisions of different jurisdictions are in conflict. Some states, especially where no criminal penalty is provided by the statute, hold the contracts absolutely void and unenforceable, on the ground that they are in effect prohibited by the statute and the corporation can acquire no rights from an illegal act<sup>3)</sup>. Courts of other states have held, where the law has provided a criminal penalty, that it is designed to be the exclusive check on the exercise by the corporation of its power to contract<sup>4)</sup>. Even independent of the provision of a penalty, many courts have held the contract nevertheless valid, and the effect of the statute merely to suspend the right of the foreign corporation to maintain a suit upon it until the foreign corporation has complied with the terms of the statute<sup>5)</sup>. A Federal court expresses itself strongly in favor of this view: "It seems to us that the position last above referred to, holding the contract good but suspending the remedy, is the reasonable and honest one to take"<sup>6)</sup>; and another Federal court has laid it down as a rule that if there is no express provision to the contrary in the statute the contract is valid and enforceable<sup>7)</sup>. This seems to represent the weight of modern authority.

If the contract is valid<sup>8)</sup>, suit may be brought on it against the foreign corporation by the other party to it, even in the local courts<sup>9)</sup>, and by the corporations, even without compliance with the statute, in the courts of another state<sup>10)</sup> or in the Federal courts<sup>11)</sup>. Upon compliance with the statute the corporation can maintain the suit in the local courts<sup>12)</sup>. A fully executed contract will not anywhere be regarded as open to attack by either party to it<sup>13)</sup>; and it is generally held that in the absence of statutory declaration that the contract is void the corporation will be estopped from setting up its failure to comply with the statute as a defence in a suit brought against it on the contract it has made<sup>14)</sup>.

2. DEALING WITH PROPERTY. — *a) Power to Deal with Property.* — The power to take title to property exists in all corporations, as incidental to the corporate existence<sup>15)</sup>. The right to take depends on the law of the state in which the property is situated. Hence if a corporation seeks to acquire property in a state other than the state of its origin its right to do so depends on the law of the former state<sup>16)</sup>. Even if its charter prohibits it from acquiring property, or acquiring it beyond a certain amount, this prohibition is properly considered as a limitation on its rights as between it and the state of its charter rather than on its power or capacity; and the state of charter alone can object to its violation<sup>17)</sup>. Hence a foreign corporation may exercise, in a state to which it has obtained admittance, powers to deal with property which it was prohibited from exercising in its chartering state. In the absence of statutory prohibitions by the state of situs, a foreign corporation has at common law the right to exercise its power to acquire and hold property within a state<sup>18)</sup>. On the other hand a state has the power, and some states exercise it, to limit by statute

<sup>1)</sup> Vide *La., Me., Porto Rieo*, note 6, XV. E. b. — <sup>2)</sup> Cf. language of statutes in Cal., Ill., Minn., Mo., N.J., N.Y., and cases cited from these states. — <sup>3)</sup> Vide *Re Comstock*, (1874) 3 Sawyer 7; *United Lead Co. v. T. W. Reedy Elevator Mfg. Co.*, (1906) 222 Ill. 199; *Heilman, etc., Co. v. Peimeisl*, (1901) 85 Minn. 121; *Harris v. Columbia Water & Light Co.*, (1901) 108 Tenn. 245. — <sup>4)</sup> *Burkheimer v. Natl. Mutual Building & Loan Assn.*, (1906) 59 W. Va. 209. — <sup>5)</sup> *Ward Land, etc., Co. v. Mapes*, (1905) 147 Cal. 747; *Chicago Mill & Lumber Co. v. Sims*, (1906) 197 Mo. 507; *Kuennan v. United States Fidelity, etc., Co.*, (1909) 159 Mich. 122 (earlier statute); *Neuchatel, etc., Co. v. Mayor, etc.*, (1898) 155 N. Y. 373. — <sup>6)</sup> *Kirven v. Virginia-Carolina Chemical Co.*, (1906) 145 Fed. 288. — <sup>7)</sup> *Blodgett v. Lanyon Zinc Co.*, (1903) 120 Fed. 893; *Thompson v. Natl. Mutual Building & Loan Assn.*, (1905) 57 W. Va. 551. — <sup>8)</sup> *Ashland Lumber Co. v. Detroit Salt Co.*, (1902) 114 Wis. 66. — <sup>9)</sup> *Colorado Iron Works v. Sierra Grande Mining Co.*, (1890) 15 Colo. 499; cf. *Cyclone Mining*

*Co. v. Baker Light & Power Co.*, (1908) 165 Fed. 996. — <sup>10)</sup> *Alleghany Co. v. Allen*, (1903) 69 N. J. L. 270. — <sup>11)</sup> *Johnson v. New York Breweries Co.*, (1910) 178 Fed. 513, affirming *New York Brewing Co. v. Johnson*, (1909) 171 Fed. 582; *Vitagraph Co. v. Twentieth, etc., Co.*, (1907) 157 Fed. 699. — <sup>12)</sup> *Woolfort v. Dixie, etc., Co.*, (1905) 77 Ark. 203 (earlier statute); cf. *Ward Land, etc., Co. v. Mapes*, (1905) 147 Cal. 747; *Neuchatel, etc., Co. v. Mayor, etc.*, (1898) 155 N. Y. 373. — <sup>13)</sup> *A. J. Cranor Co. v. Miller*, (1906) 147 Ala. 268. — <sup>14)</sup> *In re Naylor Mfg. Co.*, (1905) 135 Fed. 206; *Shoven v. J. L. Owens Co.*, (1909) 158 Mich. 321; *Swan v. Watertown Fire Ins. Co.*, (1880) 96 Pa. St. 37. — <sup>15)</sup> Vide supra, III. b. I. — <sup>16)</sup> Cf. *Nathan v. Lee*, (1899) 152 Ind. 232. — <sup>17)</sup> *Jones v. Habersham*, (1882) 107 U. S. 174; *Lancaster v. Amsterdam Improvement Co.*, (1894) 140 N. Y. 576. — <sup>18)</sup> *Blodgett v. Lanyon Zinc Co.*, (1903) 120 Fed. 893; *City of San Antonio v. Salvation Army*, (1910) 127 S. W. 860 (Tex. Civ. App.).

the right of a foreign corporation to acquire or hold property situated within its jurisdiction<sup>1</sup>). The limits set concern sometimes the length of time during which property can be held<sup>2</sup>), and sometimes the amount which can be held by a corporation which has not reincorporated within the state<sup>3</sup>). Generally prohibitions are against acquiring or holding property until certain conditions imposed by the domestic state have been complied with<sup>4</sup>). The terms are almost always confined to the corporate power to deal with real estate. Foreign corporations are not usually limited in their power to acquire and hold personal property through purchase or bequest<sup>5</sup>). The policy of limiting the power of foreign corporations is based on the theory that any large accumulation of property within a state in the hands of an (association) chartered by another state and not within the complete control of the local state may be dangerous to the state<sup>6</sup>). Hence it has the right to object; but this belongs to it exclusively, and the holding of land by the corporation cannot be objected to by private individuals<sup>7</sup>).

*b) Effect of Acquiring Property Without Authority from the State.* — If a statutory provision against the acquisition of property by a foreign corporation expressly declares that the transaction shall be void, no title can pass<sup>8</sup>). But in the absence of such declaration the weight of authority seems to be that a good title passes, subject, however, to the right of the state to exact a forfeiture for the violation of its prohibitory statute<sup>9</sup>). The conveyance is an executed transaction, and should not be regarded as capable of being ripped up by the act of either party to it or of persons claiming under them<sup>10</sup>). A few courts, however, have held the transaction void<sup>11</sup>).

*c) Conveying Property.* — The conveyance of property is also governed by the law of the situs. In the absence of statutory limitation foreign corporations have power to convey freely property within a state<sup>12</sup>), and statutes restricting this power are unusual. Some states, however, limit the power so as to protect domestic creditors<sup>13</sup>), and under some statutes foreign corporations suffer a disability arising from their being non-residents of the state<sup>14</sup>). Special statutory limitations imposed on conveyances by corporations because of their corporate character have been construed as applicable to domestic corporations only<sup>15</sup>).

3. BRINGING SUIT IN STATE COURTS. — *a) In General.* — A foreign corporation has at common law access to the courts of the state<sup>16</sup>), and this is true even of a foreign corporation which has not complied with the conditions governing its admittance to do business within a state<sup>17</sup>). Bringing a suit is not doing business within the meaning of the prohibition<sup>18</sup>). A state, however, has the right to limit its permission to sue in its courts<sup>19</sup>), and statutory restrictions upon this right of access are not infrequent.

*b) Effect of Prohibitions Connected with Requirements for Doing Business within a State.* — These statutes are most common in connection with the prohibitions on doing business without compliance with statutory prerequisites<sup>20</sup>). A frequently used means of enforcing such compliance is found in statutes which deny a non-com-

<sup>1</sup>) Ala. Code, sec. 3640; Ga. Code, sec. 1849; Hawaii R. L. of 1905, sec. 2624; Ill. Act of May 18, 1905, sec. 3; Mass. B. C. L., sec. 63; Minn. R. L., sec. 2889; Mo. R. S., secs. 1024, 4372; N. Y. G. C. L., secs. 20, 21; Ore. B. & C., sec. 5391; Pa. cf. L. 1855, p. 328, sec. 5; L. 1893, p. 389; Tex. R. S., Art. 745; Wash. 1 Bal. Code, sec. 4291; W. Va. Code, c. 54, sec. 30; Wis. S., sec. 1770c, subd. 2. But cf. Conn. P. A. 1903, c. 194, sec. 81; N. J. C. A., secs. 95, 96; P. L. 1903, p. 42. — <sup>2</sup>) Cf. Mo., N. Y., Tex., note 1, supra. — <sup>3</sup>) Cf. Ga., note 1, supra. — <sup>4</sup>) Cf. Ala., Mass., Minn., W. Va., Wis., note 1, supra. — <sup>5</sup>) Cf. Ala., note 1, supra. — <sup>6</sup>) Cf. Ga., note 1, supra. — <sup>7</sup>) Seymour v. Slide, etc., Mines, (1894) 153 U. S. 523; McKinley-Lanning Loan & Trust Co. v. Gordon, (1901) 113 Ia. 481; Omnium Investment Co. v. North American Trust Co., (1902) 65 Kans. 50. — <sup>8</sup>) Idaho Rev. Code (1909), sec. 2792; L. 1903, p. 49. — But cf. Colby v. Cleaver, (1908) 169 Fed. 206. — <sup>9</sup>) Fritts v. Palmer, (1889) 132

U. S. 282; cf. Leazure v. Hillegas, (1821) 7 S. & R. 313 (Pa.). — <sup>10</sup>) Cf. Ill. D. 1, supra, and Rachels v. Stecher Coopers Works, (1910) 128 S. W. 348 (Ark.). — <sup>11</sup>) Semple v. Bank of British Columbia, (1878) 5 Sawyer 88; and cf. Amalgamated Zinc, etc., Co. v. Bay State Zinc Co., (1909) 120 S. W. 31 (Mo.). — <sup>12</sup>) Cf. Blodgett v. Lanyon Zinc Co., (1903) 120 Fed. 893. — <sup>13</sup>) Ill. Act of May 18, 1905, sec. 3; Mo. R. S., sec. 4372. — <sup>14</sup>) Watson v. Thompson Lumber Co., (1886) 49 Ark. 83. — <sup>15</sup>) Saltmarsh v. Spaulding, (1888) 147 Mass. 224, cf. Uihlein v. Caplice, etc., Co., (1909) 102 Pac. 564 (Mont.) Vanderpoel v. Gorman, (1894) 140 N. Y. 563. — <sup>16</sup>) Edwards v. Schillinger, (1910) 245 Ill. 231, affirming s. c., (1909) 148 Ill. App. 227. — <sup>17</sup>) International Text Book Co. v. Gillespie, (1910) 129 S. W. 922. — <sup>18</sup>) Vide XV, D, 2, b, 3, note 6. — <sup>19</sup>) National Telephone Mfg. Co. v. Du Bois, (1896) 165 Mass. 117; Anglo-American Provision Co. v. Davis Provision Co., (1900) 63 N. Y. Supp. 987. — <sup>20</sup>) Vide XV, E, 1, b, 1, note 6.

plying corporation the right to sue in the state courts<sup>1</sup>). The prohibition in these statutes, however, is everywhere upon bringing suit in regard to transactions constituting doing business within the state; and business which is not interstate commerce<sup>2</sup>). It does not, therefore, affect contracts made outside the state<sup>3</sup>) or contracts made prior to the imposition of the statutory requirement<sup>4</sup>). Nor does it affect the right of the corporation to sue for the protection of its property<sup>5</sup>), or for tort<sup>6</sup>); nor its right to bring a cross action when sued<sup>7</sup>), or to appeal from a decision against it<sup>8</sup>). As to transactions within the prohibition of the statute, if it expressly declares them void<sup>9</sup>), no subsequent compliance by the foreign corporation will enable a suit to be brought on them<sup>10</sup>). If, however, the prohibition is construed, not as affecting the validity of the contract but as taking jurisdiction over it from the state court, so that the court cannot enforce the contract at the suit of the foreign corporation<sup>11</sup>), then a subsequent compliance will enable the foreign corporation to sue even upon a contract earlier entered into<sup>12</sup>). It has been held that where the statutory prohibition runs against the "maintaining" of a suit by the foreign corporation before compliance, a compliance pending suit will be sufficient to allow the corporation to prosecute its action<sup>13</sup>). Where the contract is not made void by the prohibitory statute, it can be sued upon by the foreign corporation in the Federal courts<sup>14</sup>) and in the courts of other states<sup>15</sup>), without any compliance with the terms of the statute.

*c) Other Limitations on the Right to Sue.* — A few states require a foreign corporation to give security for the costs which may be awarded against it in any suit it may bring in the state courts<sup>16</sup>). Many states still require foreign corporations to agree as a condition precedent to admission that they will not sue in the Federal courts, or impose for such a suit the penalty of forfeiture of the right to do further business within the state<sup>17</sup>). Some other limitations are found in a few statutes<sup>18</sup>).

*d) Procedure.* — In most states in a suit by a foreign corporation compliance with the conditions on which such suit is permitted is presumed<sup>19</sup>), and failure to comply is a matter to be set up by the defendant<sup>20</sup>), who should set out the facts showing non-compliance<sup>21</sup>) in his plea, unless the non-compliance appears effectively on the face of the plaintiff's declaration<sup>22</sup>). Compliance may be proved by the production of the state license<sup>23</sup>). That the plaintiff has not been legally incorporated must also be raised by plea<sup>24</sup>). The plaintiff may show in rebuttal either a de facto or a de jure existence<sup>25</sup>).

<sup>1</sup>) Cal. Civ. Code, sec. 410; Ill. Act. of May 18, 1905, sec. 6; Md. Corp. L., sec. 69; Mass. B. C. L., sec. 60; Mich. P. A. 1907, No. 310, sec. 6; Minn. R. L., sec. 2890; Mo. R. S., sec. 1026; N. J. C. A., sec. 98; R. I. G. L., c. 253, sec. 36; Hawaii R. L. 1905, sec. 2626; P. I. C. L., sec. 69. — <sup>2</sup>) International Text Book Co. v. Pigg, (1910) 217 U. S. 91; and cf. Lane & Bodley Co. v. City Electric, etc., Co., (1903) 72 S. W. 424 (Tex.). — <sup>3</sup>) Mason v. Edward Thompson Co., (1905) 94 Minn. 472; Slayton-Jennings Co. v. Specialty, etc., Co., (1903) 69 N. J. L. 214; Box Board, etc., Co. v. Vincennes Paper Co., (1904) 90 N. Y. Supp. 836. — <sup>4</sup>) Keystone Mfg. Co. v. Howe, (1903) 89 Minn. 256; M. B. Faxon & Co. v. Lovett Co., (1897) 60 N. J. L. 128. — <sup>5</sup>) United States Circle Swing Co. v. Reynolds, (1909) 224 Pa. St. 577; cf. Hunt v. New York Cotton Exchange, (1907) 205 U. S. 322. — <sup>6</sup>) Delaware, etc., Tel. Co. v. Pensauken Tp., (1902) 116 Fed. 910; Pittsburgh C. C., etc., Ry. Co. v. German Ins. Co., (1909) 87 N. E. 995 (Ind. App.). — <sup>7</sup>) J. R. Alsing & Co. v. New England, etc., Co., (1901) 73 N. Y. Supp. 347. — <sup>8</sup>) Swift & Co. v. Platte, (1903) 68 Kans. 1. — <sup>9</sup>) Vide XV, E. 1. b. 2. — <sup>10</sup>) Amalgamated Zinc & Lead Co. v. Bay State Zinc, etc., Co., (1909) 120 S. W. 31 (Mo.); Delaware R. Q. & C. Co. v. Bethlehem, etc., Ry., (1902) 204 Pa. St. 22. — <sup>11</sup>) Cf. Kinney v. Reid Ice-cream

Co., (1901) 68 N. Y. Supp. 325—328. — <sup>12</sup>) Simplex Dairy Co. v. Cole, (1898) 86 Fed. 739; Nenchatel, etc., Co. v. Mayor, (1898) 155 N. Y. 373; Hamilton v. Reeves & Co., (1904) 69 Kans. 844. — <sup>13</sup>) Ward Land, etc., Co. v. Mapes, (1905) 147 Cal. 747. — <sup>14</sup>) Johnson v. City of St. Louis, (1909) 172 Fed. 31. — <sup>15</sup>) Alleghany Co. v. Allen, (1903) 69 N. J. L. 270; and cf. s. c., (1905) 196 U. S. 458. — <sup>16</sup>) Cal. C. C. P., sec. 1036; Mich. R. S., sec. 1046; N. Y. C. C. P., sec. 3268. — <sup>17</sup>) Vide XV, D. 2. a. 2. c. — <sup>18</sup>) N. Y. C. C. P., secs. 1779, 1780; and cf. Del. Tax L., sec. 9, and N. J. C. A., sec. 101. — <sup>19</sup>) Tribble v. Halbert, (1910) 127 S. W. 618. — <sup>20</sup>) Pittsburgh Coal Co. v. Northy, (1909) 158 Mich. 530; cf. Utah Nursery Co. v. March (1909) 103 Pac. 302 (Colo.). Texas seems to be contra; Chapman v. Hallwood Cash Register Co., (1903) 73 S. W. 969, 970 (Tex. Civ. App.). — <sup>21</sup>) Arms Pocket Book, etc., Co. v. Posey, (1909) 40 Pa. Sup. Ct. 361. — <sup>22</sup>) Tennessee Packing & Provision Co. v. Fitzgerald, (1908) 140 Ill. App. 430. — <sup>23</sup>) Anglo-California Bank v. Field, (1905) 146 Cal. 644; Washington, etc., Assn. v. Stanley, (1901) 38 Ore. 319. — <sup>24</sup>) Oregonian Ry. v. Oregon R. & N. Co., (1884) 22 Fed. 245; Nickerson v. Canton Marble Co., (1898) 54 N. Y. Supp. 705. — <sup>25</sup>) Cozzens v. Chicago, etc., Co., (1897) 166 Ill. 213; cf. Commonwealth v. Corkery, (1900) 175 Mass. 460.

4. SUITS AGAINST FOREIGN CORPORATIONS. — *a) In General.* — A foreign corporation is deemed in America to be domiciled in the state of its creation, and to be incapable of existing outside that state<sup>1</sup>), though it may act outside the state through its agents<sup>2</sup>). Hence when a foreign corporation is not engaged in business in a state, and has no agency or property within the state, there is no way of reaching it with process<sup>3</sup>); and so it can be sued in domestic courts so as to enable the rendering of a personal judgment against it only when it consents. But since a corporation can do business within the state only upon terms prescribed by the state, a statute may require corporations to submit to the domestic courts as a condition of doing business within the state. Such a requirement is constitutional, and in one form or other is everywhere provided. The consent of a foreign corporation to let itself be sued is implied from its undertaking to do business under conditions imposed by the state as to service of process. As Justice Field said in the leading case of *St. Clair v. Cox*<sup>4</sup>): "If a state permits a foreign corporation to do business within her limits, and at the same time provides that in suits against it for business there done, process shall be served upon its agents, the provision is to be deemed a condition of the permission; and corporations that subsequently do business within the state are to be deemed to assent to such condition as fully as though they had specially authorized their agents to receive service of the process."

*b) Suits Requiring Personal Service.* — 1. Statutes Securing Personal Jurisdiction over the Foreign Corporation. — Statutes in all states to-day require a foreign corporation, as a prerequisite to carrying on business within the state, to consent to being sued upon service of legal process made either under the general law governing service upon domestic corporations or under some special method of securing service upon the corporation through an agent within the jurisdiction to be designated by the corporation<sup>5</sup>). This agent may be in the employ of the corporation within the state, or he may be a state official whom the statute requires the state to accept as an agent, service upon whom shall be valid against the corporation either under all circumstances or under some special circumstances, such as the failure of the corporation to name an agent engaged in its business.

2. Service of Process. — *a) Where no Agent has been Appointed.* — Even where the foreign corporation has failed to make an appointment such as is required by the statute, if it nevertheless transacts business within the state it will be held to have thereby given its consent to be sued<sup>6</sup>), and service in any manner provided for by the statute governing service upon corporations generally — e. g. a service on any resident agent of the corporation — will give the courts of the state personal jurisdiction over the foreign corporation<sup>7</sup>). If a foreign corporation is not doing business within a state, the state courts cannot obtain jurisdiction over it by the service of process

<sup>1</sup>) Cf. *Ex parte Schollenberger*, (1877) 96 U. S. 369, 378. — <sup>2</sup>) *R. R. v. Koontz*, (1881) 104 U. S. 5. — <sup>3</sup>) *Swarts v. Christie Grain, etc., Co.*, (1909) 166 Fed. 338, 341, et seq.; cf. *St. Clair v. Cox*, (1882) 106 U. S. 350. — <sup>4</sup>) *St. Clair v. Cox*, (1882) 106 U. S. 350. — <sup>5</sup>) *Ala. Const.*, sec. 232; *Code*, sec. 5306; *Laws*, Special Session 1907, p. 67; *Cal. C. P.*, secs. 411 (2)—413; *Conn. P. A.* 1903, c. 194, secs. 83, 84; *Gen. Stats.* 1902, sec. 571; *Del. Const.*, Art. IX, sec. 5; *For Corp. L.*, secs. 3—5; *Ga. Code* secs. 1899, 1902, and cf. *L.* 1909, p. 143, sec. 1; *Hawaii R. L.* 1905, sec. 2623; *Act 43 of 1909*; *Ill. Act of May 18, 1905*, sec. 2; *Act of June 3, 1907*, sec. 8; *La. Act 54 of 1904*, sec. 2; *Me. R. S.*, c. 83, sec. 19; *Pub. L.* 1909, c. 113, secs. 1, 2; *Md. L.* 1908, c. 240, secs. 66, 67, 68 (e) and (f); c. 309; *Mass. B. C. L.*, secs. 58, 59, 62; *R. L.*, c. 167, sec. 36; *Laws Mass.* 1907, c. 332; *Mich. P. A.* 1909, No. 310, sec. 1; *C. L.* 1897, sec. 10442, as amended *P. A.* 1909, No. 3; *Minn. R. L.*, secs. 2888, 3169; *Mo. R. S.*, sec. 1024a; *N. J. C. A.*, secs. 87, 88 (as amended by *P. L.* 1908, p. 176), 89, 96, 97, 99, 102; *P. L.* 1908, c. 116; *N. Y. Const.*, Art. VIII, sec. 3;

*C. C. P.*, secs. 432, 433, 931a, 1780; *Ohio Gen. Code*, secs. 179, 181, 10244, 11292 (7); *Ore. L.* 1903, p. 47, secs. 6, 7; *B. & C.*, secs. 55, 56; *Pa. Const.*, Art. XVI, sec. 5; *L.* 1862, p. 449; *L.* 1874, p. 108; *L.* 1903, p. 139; *R. I. Gen. L.*, c. 253, secs. 37—41; *Court and Practice Act*, c. 29, sec. 526; *Tex. R. S.*, Art. 1222; amended *Acts of 1903*, p. 66; *Va. Code*, secs. 1104, 3225; *Wash. 1 Bal. Code*, secs. 4291—4293, (amended *L.* 1907, p. 72), 4875, subds. 9, 13, 4877, subd. 7; *W. Va. Code*, c. 52, sec. 18; c. 53, sec. 61; *Wis. S.*, secs. 1770b, 1770c, subd. 3 (f), 1770e, 2637; *L.* 1909, c. 451; *Alaska Civ. Code*, c. 37, secs. 225—227; *P. I. C. L.*, secs. 68, 72; *Porto Rico Civ. Code*, Title II, c. II, secs. 66, 67; cf. *Barrow S. S. Co. v. Kane*, (1898) 170 U. S. 100. — <sup>6</sup>) *Smith v. Empire, etc., Co.*, (1904) 127 Fed. 462; *Italian-Swiss Colony v. Pease*, (1901) 194 Ill. 98; cf. *Edwards v. Schilling*, (1910) 245 Ill. 231. — <sup>7</sup>) *American Cotton Co. v. Beasley*, (1902) 116 Fed. 256; *Funk v. Anglo-American Ins. Co.*, (1886) 27 Fed. 336; *Thomas v. Placerville, etc., Co.*, (1884) 65 Cal. 600.

within the state upon a person who is, in another state, the agent of the foreign corporation<sup>1</sup>).

b) Where the Corporation Complies with the Statute. — If the statute requires a foreign corporation to designate a particular person or a particular officer as its agent to accept service, and the corporation complies, it cannot be held to consent to service upon any other person; and such service upon another will not be good<sup>2</sup>). Sometimes, however, statutes prescribe alternative methods<sup>3</sup>), and the majority of statutes provide for service upon any agent acting for the corporation within the state. In any event, the service must follow the terms of the statute exactly<sup>4</sup>). It must be upon a person who is acting as agent for the foreign corporation in the domestic state<sup>5</sup>), and who is not within the state upon his own affairs merely<sup>6</sup>).

e) What Agents may be Served. — If no particular agent has been designated, the statutes generally define, sometimes with great particularity<sup>7</sup>), what agents may be served. Whether a given employee is an agent within the meaning of the statute seems to depend on whether, as to the matter involved in the suit, he sustains such a relation to the corporation that it would be his duty to report to it the fact of service<sup>8</sup>). If notice to the employee is not notice to the corporation he does not represent the corporation in the capacity of agent, but rather that of servant<sup>9</sup>); or if, although an agent, he is, in the particular transaction involved, interested adversely to his employer<sup>10</sup>), then service upon him will not be binding on the corporation. On the other hand, service upon persons having some charge of the corporate business, whether generally, as officers<sup>11</sup>) or managers<sup>12</sup>), or locally, in some smaller district than the whole state<sup>13</sup>), will be good service<sup>14</sup>). It has been held that the statute will be liberally construed in favor of the validity of the service<sup>15</sup>).

3. Appearance and Representation by Attorney. — If a corporation appears generally in a suit and answers through its attorney, it is bound by the judgment rendered<sup>16</sup>). If it appears only to object to the jurisdiction of the court, it is not thus bound<sup>17</sup>). Accepting of service by an attorney does not bind the corporation where the attorney is not an agent in the transaction of the corporate business<sup>18</sup>).

4. Effect of Judgment against a Foreign Corporation. — A judgment recovered against a foreign corporation in a state court after legal service of process on the corporation is entitled to the same faith and credit in all other states as in the state in which it was rendered<sup>19</sup>). But a corporation can always attack a judgment rendered against it by showing that it is void for want of jurisdiction, for example, that the service made upon the corporation was invalid<sup>20</sup>).

5. When does a Foreign Corporation Cease to be Suable in the Courts of a State? — If a state requires a foreign corporation to designate an agent to accept service of process it may, and in some states expressly does, require the foreign cor-

<sup>1</sup>) *Conley v. Mathieson Alkali Works*, (1903) 190 U. S. 406; *Fond du Lac Cheese, etc., Co. v. Hennigsen Produce Co.*, (1909) 141 Wis. 70. — <sup>2</sup>) *Cunningham v. Klamath Lake R. Co.*, (1909) 101 Pac. 1909. — <sup>3</sup>) Cf. *Hawaii, Ill. Mass., N. Y.*, in note 5, XV, E, 4, b, 1. *Henrietta Mining, etc., Co. v. Johnson*, (1899) 173 U. S. 221; and cf. *Jones v. American, etc., Ins. Co.*, (1910) 109 Pac. 1077 (Kans.). — <sup>4</sup>) *New River Mineral Co. v. Seeley*, (1903) 120 Fed. 193; *Coolidge v. American Realty Co.*, (1904) 86 N. Y. Supp. 218. — <sup>5</sup>) Cf. *Brush Creek, etc., Co. v. Morgan-Gardner, etc., Co.*, (1905) 136 Fed. 505. — <sup>6</sup>) *Territory of New Mexico v. Baker*, (1905) 196 U. S. 432; *Hefner v. American Tube, etc., Co.*, (1908) 163 Fed. 866. But cf. *Cady v. Assoc. Colonies*, (1902) 119 Fed. 420; *Doherty v. Evening Journal Assn.*, (1904) 99 N. Y. Supp. 671, and *Jester v. Baltimore Steam Packet Co.*, (1902) 131 N. C. 54. — <sup>7</sup>) Cf. *Md. and N. J.*, note 5, XV, E, 4, b, 1. — <sup>8</sup>) *Mechanical Appliance Co. v. Castleman*, (1910) 215 U. S. 437; *Strain v. Chicago Portrait Co.*, (1903) 126 Fed. 831. — <sup>9</sup>) Cf. *Fawkes v. American Motor Car Sales Co.*, (1910) 176 Fed. 1010; *Wm.*

*Grace Co. v. Henry Martin Brick, etc., Co.*, (1909) 174 Fed. 131. — <sup>10</sup>) *Tortat v. Hardin M. & Mfg. Co.*, (1901) 111 Fed. 426; *Rehm v. German, etc., Inst.*, (1890) 125 Ind. 135. — <sup>11</sup>) *Meyer v. Pennsylvania M. & Fire Ins. Co.*, (1901) 108 Fed. 169; *American Locomotive Co. v. Dickson Mfg. Co.*, (1902) 117 Fed. 972. — <sup>12</sup>) *Toledo Computing Scale Co. v. Computing Scale Co.*, (1906) 142 Fed. 919; *Tuchband v. Chicago & A. R. R.*, (1889) 115 N. Y. 437. — <sup>13</sup>) *Société Foncière v. Milliken*, (1890) 135 U. S. 304; *Denver & R. G. R. v. Roller*, (1900) 100 Fed. 738. — <sup>14</sup>) Cf. *Board of Trade, etc., v. Hammond Elevator Co.*, (1905) 198 U. S. 424; *Boardman v. S. S. McClure Co.*, (1903) 123 Fed. 614. — <sup>15</sup>) *Minneapolis Threshing Machine Co. v. Ashauer*, (1910) 142 Wis. 646. — <sup>16</sup>) *Golden v. Murphy*, (1909) 103 Pac. 394. — <sup>17</sup>) *De Castro v. Compagnie Française, etc.*, (1896) 76 Fed. 425. — <sup>18</sup>) Cf. *Northern Central R. v. Rider*, (1876 45 Md. 24. — <sup>19</sup>) *Lafayette Ins. Co. v. French*, (1855) 18 How. 404; *Reyer v. Odd Fellows' Fraternal, etc., Assn.*, (1892) 157 Mass. 367. — <sup>20</sup>) Cf. *Old Wayne Mutual Life Assn. v. McDonough*, (1901) 204 U. S. 8.



poration to confer upon this agent authority to accept service until all liabilities assumed by the corporation within the state are discharged<sup>1</sup>). In such cases a corporation which consents to the requirement by appointing such an agent and doing business within the state cannot withdraw the agent's authority and thus escape liability to suit in the state courts<sup>2</sup>). If the corporation is required to designate an agent, and no stipulation is made, either expressly or by implication, as to the time during which the agent must continue to accept service, then if the agent is selected by the corporation it can, by terminating his authority, put an end to its liability to service<sup>3</sup>). It seems however, that if the statute requires the corporation to appoint some particular state official as its agent, the corporation cannot by its own act terminate his authority to accept service for it<sup>4</sup>). If the corporation is not required to select and designate a particular agent, but must, as a condition of doing business within a state, accept service through any of its agents within the state, then by ceasing to do business the corporation ceases to consent to be sued in the state courts without personal service<sup>5</sup>); and service upon those who had formerly been its agents in carrying on its business in the state would not bind the corporation<sup>6</sup>). This is clearly so, also, as to liabilities incurred outside the state but sued upon in the state courts<sup>7</sup>).

c) *Proceedings in Rem — Attachment and Garnishment.* — 1. *Proceedings in Rem: in General.* — Where a foreign corporation possesses real or personal property within a state, persons having claims against the corporation may proceed *in rem* against such property in the state courts<sup>8</sup>). It is immaterial in such proceedings that the foreign corporation has not consented to submit to suit, or that it has not done business within the state. The jurisdiction of the state courts depends on their jurisdiction over all property within the state, and not on personal jurisdiction over the foreign corporation. In proceedings *in rem*, service may be had upon the corporation by publication, or by notice given to it outside the state<sup>9</sup>). A judgment against the corporation in such a suit, where service has been by publication only, is binding only so far as it affects the property attached in the suit<sup>10</sup>).

2. *Attachment.* — Under statutes giving persons bringing suits in the courts of a state the right to attach the property of non-resident defendants, the latter, if corporations, are usually subject to attachments levied upon the property they own or are interested in within the jurisdiction of the state court<sup>11</sup>). Many statutes expressly include foreign corporations within those liable to such proceedings<sup>12</sup>). The fact that they do business within the state of course makes no difference; for they act through representatives only, and are non-residents so long as they are foreign corporations<sup>13</sup>). Only property within the jurisdiction of the court, however, is subject to attachment<sup>14</sup>), and shares of the corporate stock are not within the state, even though the certificates which are evidence of ownership of the stock are there<sup>15</sup>).

3. *Garnishment.* — A foreign corporation doing business within a state can be made garnishee by a state court by legal service of process under the state statute

<sup>1</sup>) Conn. P. A. 1903, c. 194, sec. 83; Me. Pub. L. 1909, c. 113, sec. 1; Md. L. 1908, c. 240, sec. 68e, f; Mass. B. C. L., sec. 58; Wash. I. Bal. Code, sec. 4293, as amended L. 1909, p. 72; Wis. S., sec. 1770c, subd. 3 (f); and cf. Ala. Code, sec. 5306. —

<sup>2</sup>) *Hill v. Empire State-Idaho, etc., Co.*, (1907) 156 Fed. 797; *Groel v. United Electric Co.*, (1905) 69 N. J. Eq. 397; *Johnson v. Mutual Reserve, etc., Ins. Co.*, (1904) 90 N. Y. Supp. 539, affirmed (1905) 93 N. Y. Supp. 1048, 1052. — <sup>3</sup>) *Forrest v. Pittsburgh Bridge Co.*, (1902) 116 Fed. 357. — <sup>4</sup>) *Mutual R. F. L. Assn. v. Phelps*, (1903) 190 U. S. 147. — <sup>5</sup>) *Conley v. Mathieson Alkali Works*, (1903) 190 U. S. 406. — <sup>6</sup>) *Winney v. Sandwich Mfg. Co.*, (1891) 50 N. W. 565 (Ia.). — <sup>7</sup>) *Mutual R. F. L. Assn. v. Boyer*, (1900) 62 Kans. 31. — <sup>8</sup>) *Wilson v. Martin-Wilson, etc., Alarm Co.*, (1889) 149 Mass. 24; *Strom v. Montana Central Ry. Co.*, (1900) 81 Minn. 364. — <sup>9</sup>) *Buck v. Massie*, (1901) 109 La. 776; cf. *Wilson v. Danforth*, (1873) 47 Ga. 676. — <sup>10</sup>) *Pennoyer v. Neff*,

(1877) 95 U. S. 714; cf. *Central Loan & Trust Co. v. Campbell Commission Co.*, (1899) 173 U. S. 84. — <sup>11</sup>) *Albright v. United Clay, etc., Co.*, (1904) 5 Pennewill 198 (Del.); cf. *D. S. Cook, etc., Mining Co. v. Thompson*, (1909) 66 S. E. 79 (Va.). — <sup>12</sup>) *Cal. C. C. P.*, sec. 412; *Ill. Act of Dec. 31, 1871*, sec. 1; *Me. R. S.*, c. 47, sec. 76; *Mass. B. C. L.*, secs. 58—62; *Mich. C. L.* 1897, sec. 746, and cf. *P. A.* 1899, p. 414; *N. J. P. L.* 1901, p. 158; cf. *C. A.*, secs. 102, 103; *N. Y. C. C. P.*, secs. 635, 636; *Ohio cf. G. C.*, secs. 11276, 11292; but cf. *G. C.*, sec. 11819; *Pa. Act of June 13, 1836*, sec. 78; *Va. Code*, sec. 2959; *Wash. 2 Bal. Code*, sec. 5351; *Wis. S.*, sec. 2731. — <sup>13</sup>) *Albright v. United Clay Production Co.*, (1904) 5 Pennewill 198 (Del.); *Voss v. Evans Marble Co.*, (1902) 101 Ill. App. 373. — <sup>14</sup>) *Cf. India Rubber Co. v. Katz*, (1901) 72 N. Y. Supp. 658. — <sup>15</sup>) *Pinney v. Nevills*, (1898) 86 Fed. 97; and cf. *Armour Bros. Banking Co. v. St. Louis Natl. Bank*, (1892) 113 Mo. 12; *Plimpton v. Bigelow*, (1883) 93 N. Y. 593.



upon the foreign corporation<sup>1</sup>), whether the debt owed by the foreign corporation to the defendant in the original suit is payable outside the state or not<sup>2</sup>). If the service is improperly made no waiver by the foreign corporation should be allowed, since the garnishment is valid only if the debt was within the jurisdiction of the state court, and the debtor ought not to be allowed to bring the debt within the jurisdiction by voluntary appearance<sup>3</sup>).

d) *Statutory Limitations in Suits against Foreign Corporations.* — In most jurisdictions a foreign corporation can plead the statute of limitations only when it has had an agent within the state upon whom service of process could have been made during the time necessary for the action to have become barred<sup>4</sup>). This should affirmatively appear from its pleadings<sup>5</sup>).

Some jurisdictions in which the local statute of limitations excepts non-residents or persons outside the jurisdiction hold that the statute applies to foreign corporations even if they are doing business within the state; and hence in these states a corporation cannot set up the statute<sup>6</sup>). Other jurisdictions with similar statutes of limitations hold that the intention of the exception in them is to cover persons who cannot bring suit, and so that foreign corporations doing business within the state are residents within the meaning of the statute<sup>7</sup>).

e) *Suits against Foreign Corporations by Non-Residents of a State.* — At common law, when jurisdiction of the parties has been properly secured, the courts of a state grant the remedies provided by the local law<sup>8</sup>) in transitory causes of action, to any plaintiff regardless of his residence<sup>9</sup>). Hence a foreign individual or corporation can sue a foreign corporation whether the cause of action arose within the state in which the suit is brought or outside its territory<sup>10</sup>). But under statutes such as that still in force in New York<sup>11</sup>), limiting to citizens of the state the right of access to state courts on a cause of action arising outside the state, a non-resident, whether an individual or a foreign corporation, cannot obtain redress in the state courts<sup>12</sup>), unless his cause of action arose within the state<sup>13</sup>). Such a provision, however, does not affect the jurisdiction of the Federal courts<sup>14</sup>), and a foreign corporation may be sued by a foreign corporation or individual in these courts wherever the foreign corporation does business, even though the courts of the state could not take jurisdiction of the suit<sup>15</sup>).

**F. Domestication of Foreign Corporations.** — 1. BY ADOPTION. — A corporation formed in one state may become a domestic corporation in a second state by compliance with some statute of the latter which confers on it the status of a domestic corporation<sup>16</sup>). Some statutes have been interpreted as having this effect. Occasionally a statute in express terms declares that upon compliance with its provisions a foreign corporation shall become a domestic corporation. In such a case no question can arise<sup>17</sup>). Where the language of the statute is not so explicit, if it still implies creation or adoption in such form as to confer the power usually exercised over corporations by the state or by the legislature, and to impose such a duty as a state corporation owes to its creator, then the foreign corporation complying will be held to be domesticated<sup>18</sup>). The question is one of legislative intent<sup>19</sup>). It is clear from the cases, however, that compliance with the ordinary statutes under which a foreign

<sup>1</sup>) Gundry v. Reakirt, (1909) 173 Fed. 167; Kraife v. Roy & Roy, (1906) 98 Minn. 141; and cf. Natl. Fire Ins. Co. v. Chambers, (1895) 53 N. J. Eq. 468. — <sup>2</sup>) Chicago, R. I., etc. Ry. v. Sturm, (1899) 174 U. S. 710; Baltimore, etc., R. R. v. Allen, (1905) 58 W. Va. 388. — <sup>3</sup>) Louisville & N. R. R. v. Steiner, (1900) 128 Ala. 353; cf. Bayer v. Lovelace, (1910) 204 Mass. 327. — <sup>4</sup>) Voliva v. Richmond Cedar Works, (1910) 68 S. E. 200 (N. C.); Colonial, etc., Mortgage Co. v. Northwest Thresher Co., (1905) 14 N. Dak. 147. — <sup>5</sup>) Taylor v. Union Pacific R. Co., (1903) 123 Fed. 155. — <sup>6</sup>) Boardman v. Lake Shore, etc., Ry. (1881) 84 N. Y. 57; State v. Natl. Acc. Society, etc., (1899) 103 Wis. 208. — <sup>7</sup>) Taylor v. Union Pacific R. Co., supra; Lawrence v. Ballou, (1875) 50 Cal. 258; cf. Cal. Civ. Code, sec. 406. — <sup>8</sup>) Herriek v. Minneapolis, etc., R. Co., (1883) 31 Minn. 11; Knight v. West Jersey R. Co., (1885) 108 Pa. St. 250. Cf. Ala. Laws, Special Session 1907, p. 67. — <sup>9</sup>) Ewald v.

Ortynsky, (1910) 75 Atl. 577 (N. J.); cf. State v. North American Land, etc., Co., (1902) 106 La. 621. — <sup>10</sup>) Youmans v. Minnesota Title Ins., etc., Co., (1895) 67 Fed. 282; Johnson v. Trade Ins. Co., (1882) 132 Mass. 432; Herriek v. Minneapolis, etc., R. Co., supra. — <sup>11</sup>) N. Y. C. C. P. sec. 1780; cf. Robinson v. Oceanic Steam Navigation Co., (1889) 112 N. Y. 315. — <sup>12</sup>) Fenkart v. Bodenmann, (1909) 118 N. Y. Supp. 1. — <sup>13</sup>) Kline v. Imperial Coal, etc., Co., (1910) 122 N. Y. Supp. 211. — <sup>14</sup>) Barrows S. S. Co. v. Kane (1898) 170 U. S. 100. — <sup>15</sup>) Barrows S. S. Co. v. Kane, supra. — <sup>16</sup>) Missouri Pac. R. v. Meeh, (1895) 69 Fed. 753. — <sup>17</sup>) Indianapolis, etc., R. R. v. Vance, (1877) 96 U. S. 450; Layden v. Endowment Rank, etc., (1901) 128 N. C. 546. — <sup>18</sup>) Cf. Pennsylvania R. R. v. St. Louis, etc., R. R., (1885) 118 U. S. 290. — <sup>19</sup>) Goodlet v. L. & N. R. R., (1896) 122 U. S. 391; Goodloe v. Tennessee, etc., R. R., (1902) 117 Fed. 348.

corporation obtains the right to do business in a state, or to appear in the state courts, does not make a foreign corporation a domestic corporation of the state granting it these permissions<sup>1</sup>). Nor does the conferring upon the foreign corporation special privileges or powers in the domestic state<sup>2</sup>).

The effect of adoption upon the foreign corporation is to give it the rights and duties of a domestic corporation in the adopting state, as well as in the chartering state<sup>3</sup>). It does not affect the original charter<sup>4</sup>), but makes the corporation subject to the domestic regulations of two states<sup>5</sup>). In the eyes of the law there are two corporations having the same name and membership as the original corporation<sup>6</sup>). The membership can act in either state so as to bind the corporation in both states<sup>7</sup>).

2. DOMESTICATION BY CONSOLIDATION<sup>8</sup>). — A corporation of one state can consolidate with a corporation of a second state under the laws of the latter state, and thus create a new corporation<sup>9</sup>), which becomes a domestic corporation in the second state and subject to its control like any domestic corporation<sup>10</sup>). Special provisions regulating such consolidations of foreign and domestic corporations are found in some states<sup>11</sup>). Consolidation may also be effected by the concurrence of two or more states in permitting a consolidation of corporations chartered in each to form a new corporation by the concurrent action<sup>12</sup>). The corporation thus created is a domestic corporation in each of the constituting states<sup>13</sup>), subject there to the duties and entitled to the privileges of domestic corporations<sup>14</sup>). The consolidation does not necessarily put an end to the existence of the constituent corporations. That can be done only by the constituent corporation and the state of its charter<sup>15</sup>).

**G. Control by the Domestic State over the Conduct of Corporate Business by Foreign Corporations.** — 1. REQUIRING REPORTS. — The control exercised by a state over the conduct of the corporate business of a foreign corporation is in the main confined to exacting compliance with certain conditions prerequisite to doing business within the state, and the imposition of taxes and license fees. A measure of control is exercised by local courts, which are open on certain conditions, as has been seen, to suits by and against foreign corporations. Many states, however, in order better to carry out the regulations of their legislation and judicial action, require foreign corporations doing business within the state to file reports<sup>16</sup>), usually annually, with proper state officers. These reports contain information which will be of value to the state, and frequently to persons intending to deal with the corporation. In many states they are in content similar to or identical with the annual reports required of domestic corporations. Penalties are usually imposed for failure to comply with the requirement.

2. CONTROL BY STATE COURTS OVER THE INTERNAL AFFAIRS OF FOREIGN CORPORATIONS. — *a) In General.* — Ordinarily the courts of one

<sup>1</sup>) *Pennsylvania R. R. v. St. Louis, etc. R. R.*, supra; *Hammond Beef & Provision Co. v. Best*, (1898) 91 Me. 431; *Bergner, etc., Brewing Co. v. Dreyfus*, (1898) 172 Mass. 154. —

<sup>2</sup>) *Goodlet v. L. & M. R. R.*, supra. — <sup>3</sup>) *Memphis, etc., R. Co. v. Alabama*, (1882) 107 U. S. 581. —

<sup>4</sup>) *Nashua & L. R. Corp. v. Boston & L. R. Corp.*, (1890) 136 U. S. 356. — <sup>5</sup>) *Cf. State v. Metz*, (1867) 3 Vroom 199. — <sup>6</sup>) *Bernhardt v. Brown*, (1896) 119 N. C. 506. — <sup>7</sup>) *Graham v. Boston, etc., R. R.* (1886) 118 U. S. 161. —

<sup>8</sup>) For valuable discussion see Beale: *Foreign Corporations*, Chap. XXXI. — <sup>9</sup>) *Cf. Louisville, etc., R. v. Louisville Trust Co.*, (1898) 174 U. S. 522; *Winn v. Wabash R. Co.*, (1902) 118 Fed. 55. — <sup>10</sup>) *Ashley v. Ryan*, (1894) 153 U. S. 436; *Smith v. Lake Shore, etc., Ry.*, (1897) 114 Mich. 460. — <sup>11</sup>) *Mont. Civ. Code of 1907*, sec. 3898, and *cf. Const.*, Art. XV, sec. 20; *N. Y. S. C. L.*, sec. 15; *cf. sec. 7*; *Va. Corp. Act 1903*, c. 5, secs. 40—42. — <sup>12</sup>) *Alabama Mfg. Co. v. Riverdale Cotton Mills*, (1904) 127 Fed. 497; *Mackay v. New York, N. H. & H. R. Co.*, (1909) 82 Conn. 73. — <sup>13</sup>) *St. Louis, etc., R. v. Berry*, (1885) 113 U. S. 465; *Winn v. Wabash R.*, (1902) 118 Fed. 55; *Whaley v. Bankers,*

*Union, etc.*, (1905) 88 S. W. 259 (Tex.). —

<sup>14</sup>) *Mackay v. New York, N. H. & H. R. Co.*, supra; *Keokuk Bridge Co. v. People*, (1896) 161 Ill. 132; *Covington Bridge Co. v. Mayer*, (1877) 31 Ohio St. 318. — <sup>15</sup>) *Keokuk & W. R. v. Missouri*, (1894) 152 U. S. 301; *cf. Ohio, etc., Ry. v. People*, (1888) 123 Ill. 467. — <sup>16</sup>) *Conn. P. A.* 1903, c. 194, sec. 87; *Ill. Act of May 18, 1905*, sec. 3; *Me. P. L.* 1909, c. 113, sec. 68; *Md. L.* 1908, c. 240, sec. 68; *Mass. B. C. L.*, sec. 66, as amended by Acts 1905, c. 233; *Mich. C. A.*, sec. 12, as amended by Act No. 137, P. A. 1097; *Mo. R. S.*, sec. 1014; *L.* 1907, p. 374; *N. J. C. A.*, sec. 43, as amended by P. L. 1900, p. 313; *N. Y. S. C. L.*, sec. 34; *Ohio G. C.*, secs. 8639, 8729; *Ore L.* 1903, p. 43, sec. 5; *L.* 1905, p. 299, secs. 1—10; *Va. C. A.*, c. 5, sec. 39; c. 1, sec. 14; *L.* 1906, p. 13; *L.* 1902—3—4, p. 682; *Wash. cf. 1 Bal. Code*, sec. 4259; *L.* 1905, p. 355; *Const.*, Art. XII, sec. 7; *W. Va. Code*, c. 53, sec. 46; amended 1901 Acts, 35; *Wis. S.*, 1770b; *L.* 1907, p. 416; *Hawaii R. L.* 1905, sec. 2627; *Alaska*, 32 U. S. Stats., c. 978, sec. 229; *P. I. C. L.*, secs. 53, 73; *Porto Rico Civ. Code*, Title II, c. I, sec. 52; c. II, sec. 69.

state will decline jurisdiction in matters which pertain to the interior life and conduct of a foreign corporation, since these are more properly within the province of the state of the corporation's origin<sup>1</sup>). Thus the courts of one state will not inquire into the de jure character of a foreign corporation which has a de facto existence in the state from which it claims a charter<sup>2</sup>). They are reluctant to exercise the power of declaring the contracts of a foreign corporation void as being in excess of its charter powers<sup>3</sup>), and will not hold themselves concluded by decisions of the chartering state in this regard<sup>4</sup>). They will not assume to decree a forfeiture of the corporate charter, or to dissolve the corporation<sup>5</sup>). Although they will, in a proper proceeding, inquire into a foreign corporation's right to act within the local state<sup>6</sup>), their decree, if against the corporation, will go merely to the extent of expelling it from the state<sup>7</sup>). It seems, however, that if, in a suit properly before it, it is claimed that the corporation has been dissolved, the local court may inquire into the competency of the authority decreeing dissolution<sup>8</sup>).

*b) Intervention in the Management of the Corporate Business.* — I. In General. — It is a general rule that the courts of one state will not exercise the power of deciding controversies relating merely to the internal management of the affairs of a corporation organized under the laws of another state, or of determining rights dependent upon such management<sup>9</sup>). Thus it will ordinarily decline jurisdiction in cases arising out of acts affecting the relation of shareholders to one another or to the corporation, such as the right to shares of stock<sup>10</sup>), the issue of shares<sup>11</sup>), assessments<sup>12</sup>) and dividends upon them<sup>13</sup>), the election of directors<sup>14</sup>), and all similar matters.

2. Limitation of the Rule of Non-Interference. — But, as was said by the Illinois Supreme Court in the case of *Babcock v. Farwell*<sup>15</sup>); "Except in cases involving the exercise of visitatorial powers, the question is not strictly one of jurisdiction but rather of discretion in the exercise of jurisdiction . . . It is the inability of the court to do complete justice by its decree, and not its incompetency to decide the question involved, that determines the exercise of its power . . . Where, however, the relief sought does not require the exercise of the visitatorial power of the government, we think the court should exercise the power of determining controversies brought before it, instead of remanding suitors to a foreign jurisdiction." Hence a tendency is observable in modern decisions to take jurisdiction to prevent fraud or ultra vires acts, where the court has obtained jurisdiction of the necessary parties and the relief sought can be conferred by acting directly on the persons of the defendants<sup>16</sup>), or by controlling the disposition of the corporate property within the state<sup>17</sup>).

*c) Insolvency of a Foreign Corporation.* — In cases of insolvency the law of the domestic state controls the disposition of property of a foreign corporation in the jurisdiction<sup>18</sup>). If no provision has been made by the state to secure domestic creditors by requiring a deposit from the foreign corporation for that purpose as a condition of doing business<sup>19</sup>), then the assets will be distributed without preferences to domestic creditors, foreign and domestic sharing alike<sup>20</sup>). A common law assignment for the benefit of creditors will be upheld where there is no local statute or policy against it<sup>21</sup>);

<sup>1</sup>) *North State Copper, etc., Mining Co. v. Field*, (1885) 64 Md. 151; cf. *Richardson v. Clinton Wall Trunk Mfg. Co.*, (1902) 181 Mass. 580; cf. *Babcock v. Farwell*, (1910) 245 Ill. 140. — <sup>2</sup>) *Hudson v. Green Hill Seminary*, (1885) 113 Ill. 618. — <sup>3</sup>) Cf. *Natl. Bank v. Matthews*, (1878) 98 U. S. 621; *Silver Lake Bank v. North*, (1870) 4 Johns. Ch. 370; but cf. *State v. McCullough*, (1867) 3 Nev. 202. — <sup>4</sup>) *Supreme Council, etc., v. Green*, (1889) 71 Md. 263; *Grant v. Henry Clay Coal Co.*, (1876) 80 Pa. St. 298. — <sup>5</sup>) *Society for the Propagation of the Gospel v. New Haven*, (1823) 8 Wheat. 164; *Merrick v. Van Santvoord*, (1866) 34 N. Y. 208. — <sup>6</sup>) *State v. Standard Oil Co.*, (1900) 61 Neb. 28. — <sup>7</sup>) *State v. W. U. M., etc., L. Ins. Co.*, (1890) 47 Ohio St. 167. — <sup>8</sup>) *Folger v. Columbian Ins. Co.*, (1868) 99 Mass. 267. — <sup>9</sup>) *Sidway v. Missouri Land, etc., Co.*, (1900) 101 Fed. 481; *McCloskey v. Snowden*, (1905) 212 Pa. St. 249. — <sup>10</sup>) *Kansas, etc., Construction Co. v. Topeka, etc., R. Co.*, (1883) 135 Mass. 34. — <sup>11</sup>) *Gregory*

*v. New York, etc., R. R.*, (1885) 40 N. J. Eq. 38. — <sup>12</sup>) *Taylor v. Mutual Reserve F. L. Assn.*, (1899) 97 Va. 60. — <sup>13</sup>) *Berford v. New York Iron Mine*, (1888) 4 N. Y. Supp. 836. — <sup>14</sup>) *Watson v. Buzzell*, (1902) 181 Mass. 338. — <sup>15</sup>) *Babcock v. Farwell*, (1910) 245 Ill. 14, 33, 34; and cf. *Kimball v. St. Louis, etc., R.*, (1892) 157 Mass. 7. — <sup>16</sup>) *Andrews v. Mines Co.*, (1910) 205 Mass. 121; *Miller v. Quincy*, (1904) 179 N. Y. 294; and cf. *Edwards v. Schillinger*, (1910) 245 Ill. 231. But cf. *Jackson v. Hooper*, (1910) 75 Atl. 568 (N. J.). — <sup>17</sup>) *Harding v. American Glucose Co.*, (1899) 182 U. S. 551. — <sup>18</sup>) *Pierce v. O'Brien*, (1880) 129 Mass. 314; *Guilander v. Howell*, (1866) 35 N. Y. 657. — <sup>19</sup>) Sometimes required in the cases of foreign insurance companies and such corporations. Cf. *Lewis v. American S. & L. Assn.*, (1898) 98 Wis. 203. — <sup>20</sup>) *Blakov. McClung*, (1898) 172 U. S. 239; *People v. Granite State Provident Assn.*, (1900) 161 N. Y. 492. — <sup>21</sup>) *Barnett v. Kinney* (1893) 147 U. S. 476; *May v. Wannemacher*, (1872) 111 Mass. 202.

but a statutory assignment under the authority of a statute of the chartering state will not prevail against the rights of competing creditors<sup>1)</sup>, except as to shareholder-creditors<sup>2)</sup>.

*d) Dissolution.* — A foreign corporation cannot be dissolved by any state other than that which chartered it<sup>3)</sup>. But dissolution by that state is effective everywhere. The liability of a corporation to suit after dissolution is governed by the law of the chartering state<sup>4)</sup>. If suits under that law do not abate upon the dissolution of the corporation, they may be prosecuted elsewhere<sup>5)</sup>. If upon dissolution a trustee is appointed with authority to sue or be sued on behalf of the corporation, he may sue for the debts of the corporation<sup>6)</sup> in other states, and if properly served would be liable to suit<sup>6)</sup>. As to the property of the corporation in other states than that of its charter, it will after dissolution be treated as a trust fund for the benefit of creditors and shareholders; and if no trustee is appointed within its jurisdiction, for the protection of those beneficiaries who are residents of the local state<sup>7)</sup>.

*e) Receivers for Foreign Corporations.* — On a proper showing, a state may appoint a receiver to take charge of the assets of a foreign corporation<sup>8)</sup> which are within its jurisdiction<sup>9)</sup>. The insolvency of a foreign corporation, together with its abandonment of its powers and franchises<sup>10)</sup>, or a fraudulent disposition by its officers or members of its assets<sup>11)</sup>, will be regarded as good grounds for the appointment. It is immaterial that the corporation has not complied with the state law before doing business in the state<sup>12)</sup>. If, however, the court is not persuaded of the need or expediency of the appointment, it may refuse to make it<sup>13)</sup>. If a receiver has already been appointed in the state from which the foreign corporation derived its charter, he will be allowed to exercise his functions as receiver in the domestic state<sup>14)</sup>, so far as this does not impair the rights of either domestic creditors<sup>15)</sup>, or foreign creditors from other states than the one appointing the receiver<sup>16)</sup>. The foreign receiver will take precedence over creditors from his own state<sup>17)</sup>, including shareholder-creditors<sup>18)</sup>.

No state is bound to recognize a receiver appointed by a foreign court, but it will often appoint as resident receiver the person who has been already appointed in the domicile of the foreign corporation<sup>19)</sup>. If, however, it appoints another person as receiver, he may be independent rather than ancillary to the first receiver<sup>20)</sup>. The locally appointed receiver will have control over all the property of the foreign corporation within the state as to which rights of creditors have not attached earlier<sup>21)</sup>. He may collect and marshal the assets of the corporation within the jurisdiction<sup>22)</sup>. He may then be directed by the local court either to make a proper distribution to resident creditors<sup>23)</sup> or, the rights of these creditors being first properly secured, to transmit the proceeds of his receivership to the receiver in the state of charter of the foreign corporation<sup>24)</sup>.

<sup>1)</sup> Security Trust Co. v. Dodd, Mead & Co., (1899) 173 U. S. 624. — <sup>2)</sup> Hawkins v. Glenn, (1899) 131 U. S. 319. — <sup>3)</sup> Society for the Propagation of the Gospel v. New Haven, (1823) 8 Wheat. 464; Republican, etc., v. Brown, (1893) 58 Fed. 644. — <sup>4)</sup> Harris-Woodberry Lumber Co. v. Coffin, (1910) 179 Fed. 257. — <sup>5)</sup> Lyeonning F. I. Co. v. Langley, (1884) 62 Md. 196; O'Reilly, etc., Co. v. Greene, (1896) 40 N. Y. Supp. 360, 41 N. Y. Supp. 1056. — <sup>6)</sup> Relfe v. Rundle, (1880) 103 U. S. 222. — <sup>7)</sup> Edwards v. Schilling, (1910) 245 Ill. 231. — <sup>8)</sup> Blake v. McClung, (1898) 172 U. S. 239; Shinney v. North American Savings, etc., Co., (1899) 97 Fed. 9; Buswell v. Order of Iron Hall, (1894) 161 Mass. 224. — <sup>9)</sup> Cf. Shields v. Coleman, (1895) 157 U. S. 168; Aeken v. Coughlin, (1905) 92 N. Y. Supp. 700. — <sup>10)</sup> Bates v. International Co., (1898) 84 Fed. 518; Dreyfus v. Seale, (1899) 55 N. Y. Supp. 1111; cf. Leary v. Columbia River, etc., Navigation Co., (1897) 82 Fed. 775. — <sup>11)</sup> Parks v. U. S. Bankers' Corporation, (1905) 140 Fed. 160; Howell v. The German Theatre, (1909) 117 N. Y. Supp. 1124. — <sup>12)</sup> Williams v. Hintermeister, (1886) 26 Fed. 889. — <sup>13)</sup> Richardson

v. Clinton, etc., Co., (1902) 181 Mass. 580; cf. North American Land, etc., Co. v. Watkins, (1901) 109 Fed. 101. — <sup>14)</sup> Thompson v. Blakey, (1901) 70 N. H. 584; Howarth v. Angle, (1900) 162 N. Y. 179. — <sup>15)</sup> Sands v. E. S. Greeley & Co., (1897) 83 Fed. 772; Walter v. McAlister Co., (1897) 48 N. Y. Supp. 26; Evans v. Pease, (1899) 21 R. I. 187. — <sup>16)</sup> Blake v. McClung, (1898) 172 U. S. 239; Ward v. Connecticut Pipe, etc., Co., (1899) 71 Conn. 345. — <sup>17)</sup> Schindelholtz v. Cullom, (1893) 55 Fed. 885. — <sup>18)</sup> Cf. Weedon v. Granite, etc., Assn., (1900) 59 S. W. 758 (Ky.). — <sup>19)</sup> Dunlop v. Paterson, etc., Ins. Co., (1878) 74 N. Y. 145. — <sup>20)</sup> Shinney v. North American, etc., Co., (1899) 97 Fed. 9. — <sup>21)</sup> Buswell v. Order of Iron Hall, (1894) 161 Mass. 224. — <sup>22)</sup> Security Savings & Loan Assn. v. Moore, (1898) 151 Ind. 174; Waters-Pierce Oil Co. v. Bell, (1897) 71 Mo. App. 653. — <sup>23)</sup> Lackmann v. Supreme Council, etc., (1904) 142 Cal. 22; Frowert v. Blank, (1903) 205 Pa. St. 299. — <sup>24)</sup> Clark v. Supreme, etc., (1905) 146 Cal. 598; Durward v. Jewett, (1894) 46 La. Ann. 559; People v. Granite State, etc., Assn., (1900) 161 N. Y. 492.

# Statutes on Corporations and Monopolies.

## Introductory.

The statutes on corporations are printed in the following order:

1. Uniform Stock Transfer Act,
2. Corporation Acts,
3. Foreign corporations,
4. Monopolies and trusts,
5. Federal corporation taxes.

The uniform act relating to stock transfers has been adopted in Louisiana, Maryland, Massachusetts. In 1911 the Act was adopted in Ohio and Pennsylvania.

There is no general federal act relating to corporations, but certain non-trading corporations are incorporated under acts of congress. The statutes of the principal commercial states are reprinted in full, in so far as they relate to commercial corporations. The statutes of certain other jurisdictions have also been reprinted owing to the fact either that the state is one in which a large number of charters are taken out for the purpose of operating in other states and territories or because the law is interesting from an historical standpoint or presents a type of legislation. The statutes relating to public service corporations, mining corporations, building and loan societies, special manufacturing corporations and corporations not organized for profit, are excluded. The provisions relating to banking corporations are in part set forth in the article on Banks and Banking.

Under the third head are presented those portions of the statutes of jurisdictions not included under the second head, in so far as they relate to foreign corporations.

Under the head of monopolies and trusts are set forth the federal acts dealing with this topic, and the laws of three states — California, Illinois, and New York — which may be regarded as typical of the laws existing in most of the states.

Finally, under the fifth head, is reprinted the federal act relating to the taxation of corporations. In addition to the federal tax, corporations are subject to taxation in the jurisdictions in which they are chartered, or in which they own property or where they are licensed to carry on business. These state laws are not reprinted.

## Abbreviations Used in Citing Statutes.<sup>1)</sup>

### Abbreviations used throughout the article.

Const. = Constitution; Art. = Article; sec. = section; C. = Code; Civ. = Civil; Pen. = Penal; C. C. P. = Code of Civil Procedure; L. (Laws), P. A. (Public Acts), P. L. (Public Laws) = annual or biennial Session Laws.

### Abbreviations for particular states.

Connecticut: Gen. Stats. = Connecticut Statutes, Revision of 1902.

Delaware: G. C. L. = General Corporation Law, 1899; For. Corp. L. = Foreign Corporation Law, 1899; Tax L. = Franchise Tax Law, 1899.

Hawaii: R. L. = Revised Laws of Hawaii, 1905.

Illinois: G. C. L. = General Corporation Law, 1872.

Maine: R. S. = Revised Statutes, 1903.

Massachusetts: B. C. L. = Business Corporation Law of 1903; R. L. = Revised Laws of Mass. 1902.

Michigan: C. A. = Corporation Act; C. L. = Compiled Laws, 1897; G. T. L. = General Tax Law of 1903.

Minnesota: R. L. = Revised Laws, 1905.

Missouri: R. S. = Revised Statutes, 1899.

New Jersey: C. A. = Corporation Act of 1896; G. S. = General Statutes, 1896; Tax. L. = Franchise Tax Law, 1884.

New York: B. C. L. = Business Corporations Law; G. C. L. = General Corporation Law; S. C. L. = Stock Corporation Law.

<sup>1)</sup> For abbreviations of names of states see table appended to the Introduction to the volumes on the United States. For abbreviations in citations of cases see Bibliography.

Ohio: G. C. = General Code, 1910.

Oregon: B. & C. = Bellinger & Cotton's Annotated Laws of Oregon.

Pennsylvania: Act of 1874 = General Corporation Law of Apr. 29, 1874.

Philippine Islands: C. L. = Corporation Law, 1896.

Rhode Island: G. L. = General Laws.

Texas: R. S. = Revised Statutes of 1895; G. L. = General Laws.

Virginia: C. A. = Corporation Act of 1903.

Washington: Bal. Code = Ballinger's Annotated Codes and Statutes, 1897, and Mahan's Supplement, 1903.

Wisconsin: S. = Sanborn & Berryman's Wisconsin Statutes.

## Uniform Stock Transfer Act.

Louisiana,<sup>1)</sup> Maryland,<sup>2)</sup> and Massachusetts.<sup>3)</sup>

### An Act to make uniform the Law of Transfer of Shares of Stock in Corporations.<sup>4)</sup>

**Sec. 1. How title to certificates and shares may be transferred.** Title to a certificate and to the shares represented thereby can be transferred only: a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby; or b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person. The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself, provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent.

The provisions of this section are in accordance with the existing law (see Cook on Corporations, sec. 373, et seq.), except that the transfer of the certificate is here made to operate as a transfer of the shares, whereas at common law it is the registry on the books of the company which makes the complete transfer. The reason for the change is in order that the certificate may, to the fullest extent possible, be the representative of the shares. This is the fundamental purpose of the whole act, and is in accordance with the mercantile usage. The transfer on the books of the corporation becomes thus like the record of a deed of real estate under a registry system.

**Sec. 2. Powers of those lacking full legal capacity and of fiduciaries not enlarged.** Nothing in this act shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor, or administrator, or other fiduciary, to make a valid indorsement, assignment, or power of attorney.

**Sec. 3. Corporation not forbidden to treat registered holder as owner.** Nothing in this act shall be construed as forbidding a corporation: a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner; or b) To hold liable for calls and assessments a person registered on its books as the owner of shares.

This provision is necessary for the protection of the corporation.

**Sec. 4. Title derived from certificate extinguishes title derived from a separate document.** The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate

<sup>1)</sup> Acts, 1910, c. 180. — <sup>2)</sup> Laws, 1910, c. 73. — <sup>3)</sup> Acts, 1910, c. 171. — <sup>4)</sup> During

1911 this act was adopted in Ohio and Pennsylvania.

and the written assignment or power of attorney of such person, though contained in a separate document.

The case here contemplated arises where a transferee obtains a certificate with a separate assignment or power of attorney. If the certificate is not delivered, and a mere assignment is made, title to the certificate will not pass under section 1. There will be, in effect, merely a contract to transfer under section 10. Even though the certificate is delivered, and therefore the transferee obtains title by the separate assignment, it seems proper that the transferee should, at his peril, keep the certificate from deceiving purchasers who may by any chance thereafter obtain it duly indorsed or assigned by the person appearing on the face of it, to be the owner. As the first purchaser can immediately get a certificate in his own name, he has an easy way to protect himself from mischance.

**Sec. 5. Who may deliver a certificate.** The delivery of a certificate to transfer title in accordance with the provisions of section 1, is effectual, except as provided in section 7, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title.

This section gives full negotiability to certificates of stock. In so doing it goes beyond the existing law but is in accordance with mercantile custom. In many cases a similar result has been reached on the theory of estoppel if the real owner's negligence contributed to the theft or unauthorized dealing with an indorsed certificate. See Cook on Corporations, c. XXI; also sec. 437.

**Sec. 6. Indorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity, or lack of consideration or authority.** The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in section 7, though the indorser or transferor: a) Was induced by fraud, duress, or mistake, to make the indorsement or delivery; or b) Has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate; or c) Has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate; or d) Has received no consideration.

By the previous section, if the certificate is properly indorsed, the delivery may be made by any one; by the present section, the indorsement, if genuine, is sufficient, in spite of the circumstances enumerated.

So far as subsection (a) is concerned, this section states the existing law. Cook on Corporations, secs. 349, 438. So far as subsections (b) and (c) are concerned, there is a dearth of authority. Doubtless a revocation by death, or otherwise, subsequent to the creation of an interest for value in the stock, would be generally held ineffectual. Lowell on the Transfer of Stock, secs. 44, 42; Dickinson v. Central Bank, 129 Mass. 279; Hess v. Rau, 95 N. Y. 359. Probably, too, if the possession of an indorsed certificate of stock were intrusted to another for the purpose of sale, subsequent revocation of the power to sell, or even death of the owner would not invalidate the title of a purchaser from the person so intrusted. The doctrine of estoppel would probably be invoked. The case may be supposed, however, of a certificate indorsed during the lifetime but not delivered until after the death of the owner. It is probable that the existing law would hold such an indorsement ineffectual, yet a purchaser without notice should, it seems, be protected.

**Sec. 7. Rescission of transfer.** If the indorsement or delivery of a certificate: a) Was procured by fraud or duress, or b) Was made under such mistake as to make the indorsement or delivery inequitable; or If the delivery of a certificate was made c) Without authority from the owner; or d) After the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless: 1. The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful; or, 2. The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights. Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it.

Though a purchaser for value gets title under the circumstances detailed in section 6, no title should be valid against the original owner unless a purchaser for value has acquired the certificate. See Cook, sec. 356.

**Sec. 8. Rescission of transfer of certificate does not invalidate subsequent transfer by transferee in possession.** Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate

by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby.

This section is based on the same reasoning as section 4. Section 4, indeed, would perhaps cover the case provided for in section 8, if no new certificates had been taken out.

**Sec. 9. Delivery of unindorsed certificate imposes obligation to indorse.** The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

This section follows the rule established as to negotiable instruments by section 79, Negotiable Instruments Law, and in regard to warehouse receipts, by section 43 of the Warehouse Receipts Act. It probably expresses the existing common law view. See Cook, sec. 465.

**Sec. 10. Ineffectual attempt to transfer amounts to a promise to transfer.** An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts.

It is a general principle of the law of sales that when a seller undertakes to sell property to which for any reason he cannot transfer title immediately, the attempted sale implies an obligation on the part of the seller to transfer title thereafter. *Lunn v. Thornton*, 1 C. B. 379; *Bates v. Smith*, 83 Mich. 347; Sales Act, sec. 5 (3).

**Sec. 11. Warranties on sale of certificate.** A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants: a) That the certificate is genuine; b) That he has a legal right to transfer it, and c) That he has no knowledge of any fact which would impair the validity of the certificate. In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim.

This section follows section 44 of the Warehouse Receipts Act, supra, and section 35 of the Bills of Lading Act, supra, which were adapted from the Negotiable Instruments Law. There seems no reason why the implied warranties in case of a sale of certificates of stock should not be the same as in the case of negotiable paper. This perhaps goes beyond the existing law but seems to conform to the tendency of the law of implied warranty. See Cook, sec. 296.

**Sec. 12. No warranty implied from accepting payment of a debt.** A mortgagee, pledgee, or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby.

The point covered by this section has not been raised in litigation on certificates of stock. It has been, however, frequently raised when bills of lading have been used as security. For this reason a section similar to that here presented has been inserted both in the uniform Act on Bills of Lading, and the Act on Warehouse Receipts.

**Sec. 13. No attachment or levy upon shares unless certificate surrendered or transfer enjoined.** No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it.

This section, like the similar provision in the Warehouse Receipts Act, and the Sales Act, is an advance upon the common law view. It is an advance which seemed even more necessary in regard to the certificates of stock than in the case of bills of lading or warehouse receipts. The common law does not universally protect the purchaser of a stock certificate against attachment on the books of the company, even though the transfer of the certificate preceded the attachment. Cook, sec. 487, et seq. By statute, in Massachusetts one who attaches stock on the books of a corporation prior to a sale of the certificate, is postponed to even a subsequent purchaser. *Clews v. Friedman*, 180 Mass. 556. There is obviously chance for the greatest fraud if this is not so. Yet if the subsequent purchaser is preferred, it is clearly improper ever to allow an attachment of stock unless some method is adopted to prevent a subsequent transfer of the certificate. Otherwise it is impossible to realize on the attached



property since there would always be a possibility of a subsequent transfer of the original certificate.

**Sec. 14. Creditor's remedies to reach certificate.** A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process.

As in the Sales Act, and Warehouse Receipts Act, it seemed essential to provide creditors with the fullest possible means of reaching the negotiable documents which their debtor has, since the creditor is deprived of other methods of realizing on the property represented by the document.

**Sec. 15. There shall be no lien or restriction unless indicated on certificate.** There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any by-law of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate.

This is in pursuance of the general policy of this act to make certificates of stock so far as possible the sole representatives of the shares which they represent.

**Sec. 16. Alteration of certificate does not divest title to shares.** The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby.

Where the law makes title to shares of stock depend upon the registry in the books of the company, alteration of the certificate obviously cannot destroy title. But if the certificate is itself to be the muniment of title, a provision was necessary, and was therefore incorporated.

**Sec. 17. Lost or destroyed certificate.** Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

The issue of a new certificate under an order of the court as provided in this section, shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate.

This section represents the prevailing rule. Cook, secs. 359, 403.

**Sec. 18. Rule for cases not provided for by this act.** In any case not provided for by this Act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

**Sec. 19. Interpretation shall give effect to purpose of uniformity.** This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

This section is contained in the Sales Act and Warehouse Receipts Act in order to induce courts, so far as possible, to consider the object of uniformity.

Although the Negotiable Instruments Act does not contain this section yet the courts of last resort have rightly applied this rule. See Brannan on Negotiable Instruments Law (1908), page 1, note 2, and cases there cited.

**Sec. 20. Definition of indorsement.** A certificate is indorsed when a assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered.

**Sec. 21. Definition of person appearing to be the owner of certificate.** The person to whom a certificate was originally issued is the person appearing by the

certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect.

**Sec. 22. Other definitions.** 1. In this act, unless the context or subject matter otherwise requires: "Certificate" means a certificate of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act. "Delivery" means voluntary transfer of possession from one person to another. "Person" includes a corporation or partnership or two or more persons having a joint or common interest. To "purchase" includes to take as mortgagee or as pledgee. "Purchaser" includes mortgagee and pledgee. "Shares" means a share or shares of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act. "State" includes state, territory, district and insular possession of the United States. "Transfer" means transfer of legal title. "Title" means legal title and does not include a merely equitable or beneficial ownership or interest. "Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor. 2. A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

As to the definition of a certificate and of a share, it should be said that it seems impossible for a state to make effectual enactment as to the nature and effect of certificates for shares, issued by corporations chartered in other states, unless such states have a similar act. The definitions of "value" and "good faith" follow the definitions which have been made in previous laws recommended by the Conference of Commissioners on Uniform Laws. The same reasons that recommended the definitions in previous enactments are applicable here also.

**Sec. 23. Act does not apply to existing certificates.** The provisions of this act apply only to certificates issued after the taking effect of this act.

Unlike bills and notes, warehouse receipts and bills of lading, certificates of stock not only may be but very frequently are held for many years without transfer. The date of the certificate will give the purchaser evidence of the applicability of this act.

**Sec. 24. Inconsistent legislation repealed.** All acts saved so of acts inconsistent with this Act are hereby repealed.

[Sec. 25. Relates to the commencement of the act.]

**Sec. 26. Name of act.** This Act may be cited as the Uniform Stock Transfer Act.

## Statutes on Corporations.

### California.

#### Constitution.

#### Article XII. Corporations.

**Sec. 1. Corporations, how formed.** Corporations may be formed under general laws, but shall not be created by special act. All laws now in force in this state concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed.

**Sec. 2. Corporations, dues from.** Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

**Sec. 3. Corporation stockholders and directors, liability of.** Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred, during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares of the corporation or association. The directors or trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint-stock

association, during the term of office of such director or trustee. Nothing in the preceding paragraph of this section shall be held to apply to any exposition company organized to promote and carry on any international exposition or world's fair within the state of California, and the liability of stockholders in any such exposition company shall be and the same is hereby limited to an amount not exceeding the par value of the stock of said corporation subscribed for by such stockholders.

**Sec. 4. Corporations, what they include.** The term corporations, as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue and be subject to be sued, in all courts, in like cases as natural persons.

**Sec. 5. Banking corporations.** The legislature shall have no power to pass any act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws. No corporation, association, or individual shall issue or put in circulation, as money, anything but the lawful money of the United States.

**Sec. 6. Existing charters, invalid in certain cases.** All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this constitution, shall thereafter have no validity.

**Sec. 7. Franchises or charters not to be extended by legislature. Extension of corporate existence.** The legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any quasi-public corporation now existing or which shall hereafter exist under the laws of this state. The term of existence of any other corporation now or hereafter existing under the laws of this state, may be extended, at any time prior to the expiration of its corporate existence, for a period not exceeding fifty years from the date of such extension, by the vote or written consent of stockholders representing two-thirds of its capital stock or of two-thirds of the members thereof. A certificate of such vote or consent shall be signed and sworn to by the president and secretary, and by a majority of the directors of the corporation and filed and certified in the manner and upon payment of fees required by law for filing and certifying articles of incorporation, and thereupon the term of the corporation shall be extended for the period specified in such certificate, and such corporation shall thereafter pay all annual or other fees required by law to be paid by corporations.

**Sec. 8. Corporate property subject to eminent domain.** The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals; and the exercise of the police power of the state shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the state.

**Sec. 9. Limitation on business of corporations.** No corporation shall engage in any business other than that expressly authorized in its charter or the law under which it may have been or may hereafter be organized; nor shall it hold for a longer period than five years any real estate, except such as may be necessary for carrying on its business.

**Sec. 10. Liabilities not released by transfer of franchise.** The legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

**Sec. 11. Issuance of stock.** No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, at a meeting called for that purpose, giving sixty days' public notice, as may be provided by law.

**Sec. 12. Elections for directors.** In all elections for directors or managers of corporations every stockholder shall have the right to vote, in person or by proxy,

the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner, except that members of coöperative societies formed for agricultural, mercantile, and manufacturing purposes may vote on all questions affecting such societies in manner prescribed by law.

**Sec. 13. State credit not to be loaned.** The state shall not, in any manner, loan its credit, nor shall it subscribe to or be interested in the stock of any company, association, or corporation.

**Sec. 14. Corporations must maintain a place of business.** Every corporation other than religious, educational, or benevolent, organized or doing business in this state, shall have and maintain an office or place in this state for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for inspection by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them, respectively; the amount of stock paid in, and by whom; the transfers of stock; the amount of its assets and liabilities, and the names and places of residence of its officers.

**Sec. 15. Foreign corporations.** No corporation organized outside the limits of this state shall be allowed to transact business within this state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this state.

**Sec. 16. Corporations may be sued, where.** A corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the court to change the place of trial, as in other cases.

## Article XIX. Chinese.

**Sec. 2. Corporations not to employ Chinese.** No corporation now existing or hereafter formed under the laws of this state shall, after the adoption of this constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The legislature shall pass such laws as may be necessary to enforce this provision.

The provisions of this section are in conflict with the treaty with China and with the fourteenth amendment to the Constitution of the United States. — See *Ex parte Kuback*, 85 Cal. 274; *In re Parrott*, 5 Pac. Coast Law Journal, 161.

## Civil Code.

### Division first.

## Part IV. Corporations.

### Title I. General Provisions Applicable to all Corporations.

Chap. I. Formation of corporations (§§ 283—321b). Chap. II. Corporate stock (§§ 322—349). Chap. III. Corporate powers (§§ 354—393). Chap. IV. Extension and dissolution of corporations (§§ 399—403). [Old section 403; repealed.] Chap. V. General provisions affecting corporations (§§ 403—404). Chap. VI. Foreign corporations (§§ 405—410).

#### Chapter I. Formation of corporations.

##### *Article I. Corporations defined and how organized.*

**Sec. 283. Corporations defined.** A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

**Sec. 284. What are public and private corporations.** Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the state; all other corporations are private.

**Sec. 285. Private corporations, how formed.** Private corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this article. A majority of such persons must be residents of this state.

**Sec. 286. For what purpose private corporations are formed.** Private corporations may be formed for any purpose for which individuals may lawfully associate themselves.

**Sec. 287. How corporations may continue their existence under this code.** Any corporation existing on the first day of January, one thousand eight hundred and seventy-three, formed under the laws of this state, and still existing, which has not already elected to continue its existence, under the provisions of this code applicable thereto, may, at any time hereafter, make such election by the unanimous vote of all its directors, or such election may be made at any annual meeting of the stockholders or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting, and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of incorporation are filed, and a certified copy thereof must be filed in the office of the secretary of state; and thereafter the corporation shall continue its existence under the provisions of this code which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed thereby.

**Sec. 288. Existing corporations not affected.** No corporation formed or existing before twelve o'clock, noon, of the day upon which this code takes effect, is affected by the provisions of part four of division first of this code, unless such corporation elects to continue its existence under it as provided in section two hundred and eighty-seven; but the laws under which such corporations were formed and exist are applicable to all such corporations, and are repealed, subject to the provisions of this section.

**Sec. 289. Name of instrument creating corporations.** The instrument by which a private corporation is formed is called "Articles of Incorporation."

**Sec. 290. Articles of incorporation, what to contain.** Articles of incorporation must be prepared, setting forth: 1. The name of the corporation; 2. The purpose for which it is formed; 3. The place where its principal business is to be transacted; 4. The term for which it is to exist, not exceeding fifty years; 5. The number of its directors or trustees, which shall not be less than three, and the names and residences of those who are appointed for the first year; provided, that the corporate powers, business, and property of corporations formed, or to be formed, for the purpose of erecting and managing halls and buildings for the meetings and accommodations of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith the leasing of stores and offices in such building or buildings for other purposes, may be conducted, exercised, and controlled by a board of not less than three or more than fifty directors, to be chosen from among the stockholders of such corporation, or among the members of such order or organization; and provided, also, that at any time during the existence of corporations for profit, other than those of the character last hereinabove provided for, the numbers of the directors may, by a majority of the stockholders of the corporation, be increased, or diminished to any number not less than three, who must be members of the corporation; whereupon a certificate stating the number of directors must be filed, as provided for in section two hundred and ninety-six for the filing of the original articles of incorporation; and provided, also, that the corporate powers, business, and property of corporations formed or to be formed for social purposes, and not directly for profit, may be exercised, conducted, and controlled by a board, consisting of such number of directors as may be in the constitution of by-laws provided; and corporations so formed may, in their constitution or by-laws, provide for the length of time that the directors, or any number thereof, shall act, and may, in like manner provide that certain directors, or a certain number of the board of

directors, to be selected by the corporation or the board of directors, in the mode and manner provided in the constitution or by-laws, shall act for any specified length of time, or otherwise, as shall be in the constitution or by-laws set forth. 6. The amount of its capital stock, and the number of shares into which it is divided. Corporations formed for profit, pursuant to the provisions of this code, may, by their articles of incorporation, provide for the classification of their capital stock into preferred and common stock. In the event that the articles of incorporation shall provide for such classification the same must contain a statement of the number of shares of stock to which preference is granted, and the number of shares of stock to which no preference is granted. The articles of incorporation shall also state, in clear and succinct manner, the nature and extent of the preference granted, and except as to the matters and things so stated, no distinction shall exist between said classes of stock or the owners thereof; provided, however, that no preference shall be granted nor shall any distinction be made between the classes of stock either as to voting power or as to the statutory or constitutional liability of the holders thereof to the creditors of the corporation. 7. If there is a capital stock, the amount actually subscribed, and by whom.

**Sec. 290a. Certain corporations to file affidavit, showing what.** Before the secretary of state issues any certificate of incorporation or certificate of authority to transact business in this state, to any corporation, authorized in its articles of incorporation to act as executor, administrator, guardian, assignee, receiver, depository or trustee, there must be filed in his office the affidavit of the persons named in said articles as the first directors of the corporation, that at least two hundred thousand dollars of the capital stock, has actually been subscribed, and paid in to a person named in such affidavit, for the benefit of the corporation and before he issues any certificate of incorporation, or certificate of authority to transact business in this state, to any corporation, authorized in its articles of incorporation to engage in the business of banking, or of receiving the money of others on deposit, there must in like manner be filed the affidavit provided herein that at least twenty-five thousand dollars of the capital stock, has actually been subscribed, and paid in to a person named in such affidavit, for the benefit of the corporation.

**Sec. 290<sup>1/2</sup>. Corporations not to use the word "trust" in corporate name unless authorized.** No corporation hereafter formed shall use the word "trust" or "trustee" as a part of its corporate name unless it shall be authorized by its articles of incorporation to act as executor, administrator, guardian, assignee, receiver, depository or trustee, nor shall any corporation hereafter formed accept or execute any trust unless it shall have complied with all the provisions of "An act authorizing certain corporations to act as executor, and in other capacities, and to provide for and regulate the administration of trusts by such corporation," approved April 6th, 1891, and the amendment thereto approved April 1st, 1897.

**Sec. 291. Certain corporations to state further facts in articles.** The articles of incorporation of any railroad, wagon road, or telegraph organization must also state: 1. The kind of road or telegraph intended to be constructed; 2. The place from and to which it is intended to be run, and all the intermediate branches; 3. The estimated length of the road or telegraph line; 4. That at least ten per cent. of the capital stock subscribed has been paid in to the treasurer of the intended corporation.

**Sec. 292. Articles, how subscribed and acknowledged.** The articles of incorporation must be subscribed by three or more persons, a majority of whom must be residents of this state, and acknowledged by each before some officer authorized to take and certify acknowledgments or conveyances of real property.

**Sec. 293. Prerequisite to filing articles for certain corporations. Amounts to be subscribed to be fixed.** Each intended corporation named in section two hundred and ninety-one, before filing articles of incorporation, must have actually subscribed to its capital stock, for each mile of the contemplated work, the following amounts, to wit: 1. One thousand dollars per mile of railroads; 2. One hundred dollars per mile of telegraph lines; 3. Three hundred dollars per mile of wagon roads.

**Sec. 294. Prerequisite to filing articles of incorporation for railroad, telegraph, and wagon road corporations.** Before the articles of incorporation of any corporation referred to in the preceding section are filed, there must be paid, for the benefit of the corporation, to a treasurer elected by the subscribers, ten per cent. of the amount subscribed.

**Sec. 295. Oath of officer to subscription of stock and payment of ten per cent. in case of such corporations.** Before the secretary of state issues to any such corporation a certificate of the filing of articles of incorporation, there must be filed in his office an affidavit of the president, secretary, or treasurer named in the articles, that the required amount of the capital stock thereof has been actually subscribed, and ten per cent. thereof actually paid to a treasurer for the benefit of the corporation.

**Sec. 296. To file articles with county clerk and secretary of state, and receive certificate. Term of existence.** Upon filing the articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof certified by the county clerk with the secretary of state, and the affidavit mentioned in the last section where such affidavit is required, the secretary of state must issue to the corporation, over the great seal of the state, a certificate that a copy of the articles containing the required statement of facts has been filed in his office, and thereupon the persons signing the articles and their associates and successors shall be a body politic and corporate by the name stated in the certificate, and for the term of fifty years, unless it is, in the articles of incorporation, otherwise stated, or in this code otherwise specially provided; provided, however, that the secretary of state shall not file any copy of the copy of any articles, or issue any certificate of incorporation to any corporation, which articles set forth the corporate name of any corporation heretofore organized in this state, or file any copy of any articles, or issue any certificate of incorporation to any corporation existing at the time of filing said articles, which articles set forth a name so closely resembling the name of such corporation as will tend to deceive.

**Sec. 297. Certified copy of certificate to be prima facie evidence.** A copy of any article of incorporation filed in pursuance of this chapter, and certified by the secretary of state, or by the county clerk of the county where the original articles shall have been filed, must be received in all the courts of this state, and other places, as prima facie evidence of the facts therein stated.

**Sec. 297a. Restoration of lost original articles of incorporation.** Whenever the articles of incorporation of any corporation have been, or may hereafter be, destroyed by conflagration or other public calamity, a copy of the certified copy of the articles of incorporation of such corporation filed in the office of the secretary of state pursuant to the provisions of section two hundred and ninety-six of this code, duly certified by such secretary of state, may be filed in the office of the county clerk of the county where such articles of incorporation were on file at the time of their loss or destruction. Any such copy filed pursuant to this section shall have the same force and effect as the document so lost or destroyed.

**Sec. 298. Who are members and who stockholders of a corporation.** The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the incorporators and their successors are called members.

**Sec. 299. Corporation to file articles in county where it holds property.** No corporation hereafter formed must purchase, locate, or hold property, in any county in this state, other than the county in which its original articles of incorporation are filed, without filing a copy of the copy of its articles of incorporation filed in the office of the secretary of state, duly certified by such secretary of state, in the office of the county clerk of the county in which such property is situated within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this code or not, must, within ninety days after the passage of this section, file such certified copy of the copy of its articles of incorporation in the office of the county clerk of every county in this state in which it holds any property, except the county where the original articles of incorporation are filed; and if any corporation hereafter acquires any property in a county other than that in which it now holds property, it must, within ninety days thereafter, file with the clerk of such county such certified copy of the copy of its articles of incorporation. The copies filed with the several county clerks, and certified copies thereof, have the same force and effect in evidence as the originals. Any corporation failing to comply with the provisions of this section can not maintain or defend any action or proceeding in relation to such property, its rents, issues, or profits, until such articles of incorporation, and such certified copy of its articles

of incorporation, and such certified copy of the copy of its articles of incorporation, are filed at the places directed by the general law and this section; provided, that all corporations are liable in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; and provided further, that the said damages may be recovered in an action brought in any court of this state of competent jurisdiction, by any party or parties suffering the same.

**Sec. 300. Banking corporations may elect to have capital stock.** Every corporation that has been or may be created under the general laws of this state, doing a banking business therein, and which has no capital stock, may elect to have a capital stock, and may issue certificates of stock therefor, in the same manner as corporations formed under the provisions of chapter one, article one, of the civil code, relating to the formation of corporations; provided, that no such corporation shall use or convert any moneys or funds theretofore belonging to it, or under its control, into capital stock; but such funds or moneys must be held and managed only for the purposes and in the manner for which they were created. Before such change is made, a majority of the members of such corporation present at a meeting called for the purpose of considering the proposition whether it is best to have a capital stock, its amount, and the number of shares into which it shall be divided, must vote in favor of having a capital stock, fix the amount thereof, and the number of shares into which it shall be divided. Notice of the time and place of holding such meeting, and its object, must be given by the president of such corporation, by publication in some newspaper printed and published in the county, or city and county, in which the principal place of business of the corporation is situated, at least once a week for three successive weeks prior to the holding of the meeting. A copy of the proceedings of this meeting, giving the number of persons present, the votes taken, the notice calling the meeting, the proof of its publication, the amount of capital actually subscribed, and by whom, all duly certified by the president and secretary of the corporation, must be filed in the offices of the secretary of state and clerk of the county where the articles of incorporation are filed. Thereafter such corporation is possessed of all the rights and powers, and is subject to all the obligations, restrictions, and limitations, as if it had been originally created with a capital stock; and provided further, that no bank in this state shall ever pay any dividend upon so-called guaranty notes, nor upon any stock, except upon the amount actually paid in money into said capital upon such stock, and any payment made in violation of this provision shall render all officers and directors consenting to the same jointly and severally liable to the depositors to the extent thereof.

**Sec. 300a. Change of name; filing copy of decree.** Every corporation which has changed its name under the provisions of sections one thousand two hundred and seventy-five, one thousand two hundred and seventy-six, one thousand two hundred and seventy-seven, one thousand two hundred and seventy-eight, and one thousand two hundred and seventy-nine of the code of civil procedure, must file in the office of secretary of state and in the office of the county clerk of each county in which the original articles or certified copies thereof are required by law to be filed, a certified copy of the decree of the court changing such name.

#### *Article II. By-Laws, directors, elections, and meetings.*

**Sec. 301. By-laws, when, how, and by whom adopted.** Every corporation formed under this title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the constitution and laws of this state. The assent of stockholders representing a majority of all the subscribed capital stock, or of a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks' notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

**Sec. 302. Directors, election of, notice, etc.** The directors of a corporation must be elected annually by the stockholders or members, and if no provision is



made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given as prescribed in section three hundred one, unless all of the stockholders waive such notice in writing.

**Sec. 303. By-laws may provide for what.** A corporation may, by its by-laws, where no other provision is specially made, provide for: 1. The time, place, and manner of calling and conducting its meetings, and may dispense with notice of all regular meetings of stockholders or directors; 2. The number of stockholders or members constituting a quorum; 3. The mode of voting by proxy; 4. The qualifications and duties of directors, and also the time of their annual election, and the mode and manner of giving notice thereof; 5. The compensation and duties of officers; 6. The manner of election and tenure of office of all officers other than the directors; and 7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense. 8. The newspaper in which all notices of the meetings of stockholders or board of directors, notice of which is required, shall be published, which must be some newspaper published in the county where the principal place of business of the corporation is located, or if none is published therein, then in a newspaper published in an adjoining county; provided, that when the by-laws prescribe the newspaper in which said publication shall be made, if from any cause, at the time any publication is desired to be made, the publication of such newspaper shall have ceased, the board of directors may, by an order entered on the records of the corporation, direct the publication to be made in some other newspaper published in the county, or if none is published therein, then in an adjoining county.

**Sec. 304. By-laws open for public inspection; how amended.** All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand, in some book kept in the office of the corporation, to be known as the "book of by-laws," and the book must then be open to the inspection of the public during office hours each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members. The written assent of the holders of two-thirds of the stock, or two-thirds of the members if there is no capital stock, is effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it must be copied in the book of by-laws with the original by-laws, and immediately after them. If any by-law is repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written assent was filed, must be stated in said book. Until copied or stated as hereinbefore required, no by-law, nor any amendment or repeal thereof, can be enforced against any person, other than the corporation, not having actual notice thereof.

**Sec. 305. Directors, how many and how elected; powers.** The corporate powers, business, and property of all corporations formed under this title must be exercised, conducted, and controlled by a board of not less than three directors, to be elected from among the holders of stock; or where there is no capital stock, then from the members of such corporations; except that corporations formed or to be formed for the purpose of erecting and managing halls and buildings for the meetings and accommodation of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith, the leasing of stores and offices in such building or buildings for other purposes, the corporate powers, business, and property thereof may be conducted, exercised, and controlled by a board not less than three or more than fifty directors, to be chosen from among the stockholders of such corporation or from among the members of such order or organization. A majority of the directors must be in all cases residents of this state. Directors of corporations for profit must be holders of stock therein to an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

[Sec. 306. Repealed.]

**Sec. 307. Elections, how conducted.** All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name, as provided in section three hundred and twelve of this code, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. The provisions of this section, so far as it relates to cumulative voting, shall apply to all corporations and associations doing business in this state, having a capital stock or shares of stock, and electing directors by a meeting of stockholders held in this state, whether such corporations or associations are organized under the laws of this state or not; and no election for directors of any corporation or association, doing business in this state, and electing directors in this state, shall be valid, if the right of a stockholder to cumulate his shares as herein provided shall be denied. In corporations having no capital stock, each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all the candidates. In any case the director receiving the highest number of votes shall be declared elected. The provisions of this section, so far as it relates to cumulative voting, shall not apply to literary, religious, scientific, social or benevolent societies, having no capital stock or shares, unless it shall be so provided in their by-laws or rules.

**Sec. 308. Organization of board of directors, etc.** Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board made when duly assembled, is valid as a corporate act.

**Sec. 309. Dividends to be made from surplus profits; increase and reduction of capital stock.** The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they create any debts beyond their subscribed capital stock; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock, except as hereinafter provided, nor reduce or increase the capital stock, except as herein specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have clausured their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen) are, in their individual or private capacity, jointly and severally liable to the corporation, and to the creditors thereof, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitation is a bar to any suit against such directors for any sums for which they are liable by this section; provided, however, that where a corporation has been heretofore or may hereafter be formed for the purpose, among other things, of acquiring, holding, and selling real estate, water, and water rights, the directors of such corporation may, with the consent of stockholders representing two-thirds of the capital stock thereof, given at a meeting called for the purpose, divide among the stockholders the land, water, or water rights so by such corporation held, in the proportions to which their holdings of such stock at the time of such division entitle them. All conveyances made by the corporation in pursuance of this section must be made and received subject to the debts of such corporation existing at the date of the conveyance thereof. Nothing herein prohibits a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution, or the expiration of its term of existence.

**Sec. 310. Directors, removal from office of, etc.** The board of directors may be removed from office by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after previous notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon

give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuses to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section three hundred and one of this title, unless other express provision has been made therefor in the by-laws. In case the board of directors is so removed, a new board may be elected at the same meeting.

**Sec. 311. Justice of the peace may order meeting, when.** Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat. The application of a number of stockholders less than three, but holding a majority of the capital stock, has the same effect as an application by three or more stockholders or members.

**Sec. 312. Elections, how stock must be represented.** At all elections or votes had for any purpose in corporations formed for profit there must be a majority of the subscribed capital stock or of the members represented, either in person or by proxy in writing; provided, that in all instances of corporations formed for purposes other than profit the by-laws shall provide the number of members or stockholders that shall constitute a quorum for the transaction of business. Every person acting therein, in person or by proxy or representative, must be a member thereof or a stockholder, having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent or any stockholders or members, and may be set aside by petition to the superior court of the county where the same is held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors.

**Sec. 313. Representation of minors, insane, or deceased persons.** The shares of stock of an estate of a minor, or insane person, may be represented by his guardian, and of a deceased person by his executor or administrator.

**Sec. 314. Election may be postponed.** If from any cause an election does not take place on the day appointed by law or the by-laws, or otherwise, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders as provided in section three hundred and ten.

**Sec. 315. Elections, complaints may be referred to superior court; relief.** Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the superior court of the county in which such election is held must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party, or those to be affected thereby.

**Sec. 316. False certificate, report, or notice to make officers liable.** Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.

**Sec. 317. Meeting by consent to be valid.** When all the stockholders or members of a corporation are present at any meeting however called or notified, and sign a

written consent thereto on the records of such meetings, or if those not present sign in writing a waiver of notice of such meeting, which waiver is presented and made a part of the records of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed.

**Sec. 318. Proceedings at such meeting to be binding.** The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

**Sec. 319. Meetings, where held.** The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business.

**Sec. 320. Special meetings, how called.** When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be none, on the order of two directors.

**Sec. 321. Banking corporations must keep certain books open for inspection.** Every corporation doing a banking business in this state must keep in its office, in a place accessible to the stockholders, depositors, and creditors thereof, and for their use, a book containing a list of all stockholders in such corporation, and the number of shares of stock held by each; and every such corporation must keep posted in its office, in a conspicuous place, accessible to the public generally, a notice, signed by the president or secretary, showing: First: The names of the directors of such corporation; Second: The number and value of shares of stock held by each director. The entries on such book and such notice shall be made and posted within twenty-four hours after any transfer of stock, and shall be conclusive evidence against each director and stockholder of the number of shares of stock held by each. The provisions of this section shall apply to all banking corporations formed or existing before twelve o'clock noon of the day on which this code took effect, as well as to those formed after such time.

**Sec. 321a. Change of principal place of business, how effected.** Every corporation that has been or may be created under the general laws of this state may change its principal place of business from one place to another in the same county, or from one city or county to another city or county within this state. Before such change is made, the consent, in writing, of the holders of two-thirds of the capital stock of the corporation must be obtained and filed in its office. When such consent is obtained and filed, notice of the intended removal or change must be published, at least once a week, for three successive weeks, in some newspaper published in the county, wherein said principal place of business is situated, if there is one published therein; if not, in a newspaper of an adjoining county, giving the name of the county or city where it is situated and that to which it is intended to remove it. Whenever any such change is made, a copy of the resolution or action of the board of directors authorizing the same, together with a copy of an affidavit of the publication above required, all duly certified by the president and secretary of the corporation with the corporate seal affixed, shall be filed in each office where the original articles of incorporation are, or any copy thereof is required to be filed. This section shall not be construed to require such consent, notice or publication in the case of any such removal from one location to another in the same city, town or village.

**Sec. 321b. Stockholders' meetings, who may vote, and use of proxies.** At all meetings of stockholders of corporations organized under the laws of this state, or in the case of corporations having no capital stock, then at all meetings of the members of such corporation, only the stockholders or members actually present shall be entitled to vote on any proposition, including the election of directors and other officers of the corporation, unless proxies from absent or non-attending stockholders or members shall be held by some person or persons present at such meeting and shall be executed in accordance with the provisions of this section. Every such proxy must be executed in writing by the member or stockholder himself, or by his duly authorized attorney. No proxy heretofore given or made shall be valid after the expiration of eleven months from the passage of this act, unless the member or stockholder executing it shall have specified therein the length of time for which such proxy is to continue in force, which must be for some limited period, and in no case to exceed seven years from the date of the execution of such proxy. No proxy hereafter to be given or made shall be valid after the expiration of eleven

months from the date of its execution, unless the member or stockholder executing it shall have specified therein the length of time for which such proxy is to continue in force, which must be for some limited period, and in no case to exceed seven years from the date of the execution of such proxy. Every proxy shall be revocable at the pleasure of the person executing it; but a corporation having no capital stock may prescribe in its by-laws the persons who may act as proxies for members, and the length of time for which such proxies may be executed.

## **Chapter II. Corporate stock.**

### *Article I. Stock and stockholders.*

**Sec. 322. Liabilities of stockholders. They may be released, when.** Each stockholder of a corporation is individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt, and if an action has been brought against him upon such debt, it must be dismissed, as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, applies not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian, or other trustee, who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian, or trustee, are not liable under the provisions of this section, by reason of any such investment; nor must the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment continues until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person or estate represented, is to be deemed the stockholder, as respects such liability. In a corporation having no capital stock, each member is individually and personally liable for an equal share of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as by this section may be brought against one or more stockholders, and similar judgments may be rendered. The liability of each stockholder of a corporation formed under the laws of any other state or territory of the United States, or of any foreign country, and doing business within this state, is the same as the liability of a stockholder of a corporation created under the constitution and laws of this state.

**Sec. 323. Certificates, how and when issued.** All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to full payment, under such restrictions and for such purposes as their by-laws may provide, but any certificate issued prior to full payment must show on its face what amount has been paid thereon. All certificates of stock issued by corporations authorized by their articles of incorporation to issue stocks of different classes, shall express upon their face the character of stock represented by said certificates. The said certificates shall also state the number of shares of stock of each class which said corporation is authorized to issue, and the said certificates shall also contain a statement of the nature and extent of the preference granted to the preferred stock.

**Sec. 324. Shares are personal property; how transferred; water companies.** Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock, except as hereinafter provided, are personal property, and may be transferred by indorsement by signature of the proprietor, his agent, attorney, or legal representative, and the delivery of the certificate; but such transfer is not valid, except as to the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by whom and to whom transferred, the number of the certificate, the number or designation of the shares, and the date of the transfer; provided, however, that any corporation organized for, or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes or for domestic use, may in its by-laws provide that water shall only be so sold, distributed, supplied, or delivered to owners of its capital stock, and that such stock shall be appurtenant to certain lands when the same are described in the certificate issued therefor; and when such certificate shall be so issued, and a certified copy of such by-law recorded in the office of the county recorder in the county where such lands are situated, the shares of stock so located on any land shall only be transferred with said lands, and shall pass as an appurtenance thereto. Whenever any officer of any corporation shall refuse to make entries upon the books thereof, or to transfer stock therein, or to issue a certificate or certificates therefor to the transferee as provided by this and the next preceding section, such officer shall be subject to a penalty of four hundred dollars, to be recovered as liquidated damages, in an action brought against him by the person aggrieved.

**Sec. 325. Transfer of shares held by married women, etc. Dividends are individual property.** Shares of stock in corporations standing on the books of the corporation in the name of a married woman may be transferred by her, her agent or attorney, without the signature of her husband, and in the same manner as if such married woman were a feme sole. All dividends payable upon any of such shares of stock may be paid to her, her agent or attorney, in the same manner as if she were unmarried; and any proxy or power given by her, touching any of such shares, is valid and binding, and neither it nor any receipt for dividends need be signed by her husband.

**Sec. 326. Non-resident stockholders. Bonds required before transfer.** When the shares of stock in a corporation are owned by parties residing out of the state, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant a bond of indemnity, with two sureties, satisfactory to the officers of the corporation; or, if not so satisfactory, then one approved by a judge of the superior court of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares in case of his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required as herein provided, neither the corporation nor any officer thereof shall be liable for refusing to enter the transfer on the books of the corporation.

**Sec. 327. Contract to relieve directors void.** Any contract or contracts, verbal or written, hereafter made whereby it is sought directly or indirectly to relieve any director or trustee of any corporation or joint-stock association from any liability imposed by section three of article twelve of the constitution of California, are hereby declared to be and shall be null and void.

**Sec. 328. New or duplicate certificates of shares of stock, court may order issue.** Whenever a certificate of stock or of shares in a corporation organized under the laws of this state has been lost, destroyed or wrongfully withheld, the owner thereof may bring an action against such corporation in the superior court of the county in which is located its principal place of business, for the purpose of obtaining a new or duplicate certificate. If by the books of the corporation the stock stands in the name of a person other than the plaintiff, or if by such books it appears that some other person claims or has some right, title, or interest in, or lien upon, such stock, all such persons must be made parties defendant with the corporation. Sum-

mons must be issued and served as in other civil actions, and in addition thereto, the court must direct its clerk to issue and cause to be published, at least once a week for four successive weeks, in some newspaper published in the county, a notice setting forth the pendency of the action, the names of the parties thereto, the court in which it is pending, the name of the corporation issuing the stock, the number of the certificate and the number of the shares, the name of the person mentioned as stockholder in the certificate, and notifying all persons claiming said shares, or any of them, or any interest or lien therein or thereupon, to be and appear before the court at a time and place to be designated in the notice, not less than thirty days from the first publication thereof, then and there to show cause why a new certificate should not be directed to be issued to the plaintiff, and to set forth their rights in or claim to such shares. If any one appears and answers or intervenes in the action, it must proceed to trial as in other civil cases, and the court must enter judgment as from the facts established may be proper; but if no one appears within the time designated in such notice, nor within the time allowed by law after the services of such summons, the court must hear such evidence as may be offered in support of the allegations of the complaint, and make and file its decision thereon, and thereupon may enter its judgment canceling the lost, destroyed or wrongfully withheld certificate and directing the corporation, upon payment to it of all costs incurred by it in the premises and without costs against the corporation, to issue to the plaintiff a new or duplicate certificate. After the issuing of a new certificate by the corporation pursuant to any judgment in such action, no action can ever be maintained by any person against the corporation in reference to said lost or destroyed certificate or the shares represented thereby, and thereafter any such action is forever barred as against the corporation.

**Sec. 329. Lost or destroyed bonds, how duplicates may be obtained. Summons. Judgment. Indemnity.** Whenever a bond or bonds of a corporation organized under the laws of this state or of any other state, or any territory of the United States, has or have been lost or destroyed in this state by fire, earthquake, or other calamity, the owner thereof may bring an action against such corporation and the trustee or mortgagee of such bonded indebtedness in the superior court of the county in which such bond or bonds were lost or destroyed, or in which owner resides, or in which is located the principal place of business of such corporation, for the purpose of obtaining a new or duplicate bond or bonds. If said bond or bonds stand in the name of, or are registered in the name of a person other than the plaintiff, or if it appears by the books of the corporation that any other person claims or has some right, title, interest in, or lien upon such bond or bonds, all such persons must be made parties defendant with the corporation and the trustee and mortgagee. Summons must be issued and served as in other civil actions and in addition thereto the court must direct its clerk to issue and cause to be published at least once a week, for four successive weeks, in some newspaper published in the county a notice setting forth the pendency of the action, the names of the parties thereto, the court in which it is pending, the name of the corporation which had issued the bond or bonds, the number of said bond or bonds, if any, and the amount thereof, and the person in whose name the same stands or is registered, and notifying all persons claiming said bond or bonds, or any of them or any interest or lien therein or thereupon, to be and appear before the court at a time and place to be designated in the notice, not less than thirty days from the first publication thereof, then and there to show cause why a new bond or bonds should not be directed to be issued to the plaintiff and to set forth their rights in, or claims to such bond or bonds. If any one appears and answers or intervenes in the action it must proceed to trial as in other civil cases and the court must enter judgment as from the facts established may be proper; but if no one appears within the time designated in said notice, nor within the time allowed by law after the service of such summons, the court must hear such evidence as may be offered in support of the allegations of the complaint and make and file its decision thereon, and thereupon may enter its judgment canceling the lost or destroyed bond or bonds and directing such corporation, upon payment to it of all costs incurred by it in the premises, and upon payment to it of the money required and necessary to re-issue new bond or bonds and without costs against the corporation or other defendant, mortgagee or trustee, to issue to the plaintiff a new or duplicate bond or bonds upon the said plaintiff giving proper indemnity to the said corporation and the said mortgagee or trustee.



*Article II. Assessments of stock.*

**Sec. 331. Directors may levy assessments.** The directors of any corporation formed or existing under the laws of this state, after one fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof in the manner and form, and to the extent provided herein.

**Sec. 332. Limitation. How levied.** No one assessment must exceed ten per cent. of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows: 1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount; 2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent. per month, unless in the articles of incorporation it is otherwise provided; 3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

**Sec. 333. Levy of assessment. Old assessment remaining unpaid.** No assessment must be levied while any portion of a previous one remains unpaid, unless: 1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment; 2. The collection of the previous assessment has been enjoined; or 3. The assessment falls within the provisions of either the first, second, or third subdivision of section three hundred and thirty-two.

**Sec. 334. What order shall contain.** Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

**Sec. 335. Notice of assessment. Form.** Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business.) Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which this assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

**Sec. 336. Publication and service of notice.** The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county.

**Sec. 337. Delinquent notice. Form.** If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:



(Name in full. Location of principal place of business.) Notice. There is delinquent upon the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any,) the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount.) And in accordance with law (and an order of the board of directors, made on the date, if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of secretary, with location of office.)

**Sec. 338. Contents of notice.** The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

**Sec. 339. How published.** The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

**Sec. 340. Jurisdiction acquired, how.** By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale.

**Sec. 341. Sale to be by public auction.** On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

**Sec. 342. Highest bidder to be the purchaser.** The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs.

**Sec. 343. In default of bidders, corporation may purchase.** If, at the sale of stock, no bidder offers the amount of the assessments, and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation, it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

**Sec. 344. Disposition of stock purchased by corporation.** All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

**Sec. 345. Extension of time of delinquent sale.** The dates fixed in any notice of assessments or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

**Sec. 346. Assessment shall not be invalidated.** No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must be begun anew.

**Sec. 347. Action for recovery of stock, and limitation thereof.** No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

**Sec. 348. Affidavits of publication. Affidavits of sale to be filed.** The publication of notice required by this article may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are prima facie evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are prima facie evidence of the contents thereof.

**Sec. 349. Waiver of sale. Action to recover assessment.** On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

### Chapter III. Corporate powers.

#### *Article I. General powers.*

**Sec. 354. Power of corporations.** Every corporation, as such, has power: 1. Of succession, by its corporate name, for the period limited; and when no period is limited, perpetually; 2. To sue and be sued, in any court; 3. To make and use a common seal, and alter the same at pleasure; 4. To purchase, hold, and convey such real and personal estate as the purposes of the corporation may require, not exceeding the amount limited in this part; 5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation; 6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock; 7. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments; 8. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

**Sec. 355. Limitation of powers.** In addition to the powers enumerated in the preceding section, and to those expressly given in that title of this part under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.

**Sec. 356. Issuing or circulating paper money prohibited.** No corporation shall create or issue bills, notes, or other evidences of debt, upon loans or otherwise, for circulation as money.

**Sec. 357. Misnomer does not invalidate instrument.** The misnomer of a corporation in any written instrument does not invalidate the instrument, if it can be reasonably ascertained from it what corporation is intended.

**Sec. 358. Corporation to organize within one year.** If a corporation does not organize and commence the transaction of its business, or the construction of its works within one year from the date of its incorporation, or if, after its organization

and commencement of its business, it shall lose or dispose of all its property, and shall fail for a period of two years to elect officers and transact, in regular order, the business of said corporation, its corporate powers shall cease, and the said corporation may be dissolved at the instance of any creditor of the said corporation, at the suit of the state, on the information of the attorney general; but the resumption of its business in good faith by such corporation prior to the commencement thereof shall be a bar to such suit. The due incorporation of any company claiming in good faith to be a corporation under this part, and doing business as such, or its right to exercise corporate powers, shall not be inquired into collaterally in any private suit to which such de facto corporation may be a party; but such inquiry may be had at the suit of the state on information of the attorney general; provided, however, as to any company claiming in good faith to be, and which has been doing business for ten consecutive years as a corporation, no such inquiry shall be made either by the state or by any person whatsoever.

**Sec. 359. Increasing and diminishing capital stock or bonded indebtedness, how.**

No corporation shall issue stocks or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness is void. Every corporation may increase or diminish its capital stock, and every corporation, or two or more corporations, may create or increase its or their bonded indebtedness, subject to the following provisions:

First. The capital stock of a corporation may be increased or diminished at a meeting of the stockholders by a vote representing at least two-thirds of the subscribed or issued capital stock, or in the manner otherwise in this section provided; when by meeting as aforesaid, then such meeting must be called by the board of directors or trustees, and notice must be given by publication in a newspaper published in the county or city and county where the principal place of business of the corporation is located, or if there be none published in said county or city and county, then in a newspaper published in an adjoining county, or city and county, such paper to be designated by the board of directors or trustees in the order calling for the meeting; provided however, that where the articles of incorporation provide for two or more kinds of capital stock, no increase or reduction of capital stock shall be made without the assent of two-thirds of all the subscribed stock, and in making such increase or reduction, the assent shall identify the particular class or classes of stock to be increased or reduced, and the amounts apportioned to each.

Second. The notice must specify the object of the meeting and the amount to which it is proposed to increase or diminish the capital stock, the time and place of holding the meeting, which latter must be at the principal place of business of the corporation and at the building where the board of directors or trustees usually meet. The notice herein provided must be published once a week for at least sixty days. The capital stock can not be diminished to an amount less than the indebtedness of the corporation.

Third. The bonded indebtedness of a corporation may be created or increased by a vote of the stockholders representing at least two thirds of the subscribed or issued capital stock at a meeting called by the board of directors or trustees, and after notice of the time and place of the meeting published in the same manner and for the time prescribed, which notice shall state the amount of the bonded indebtedness which it is proposed to create, or the amount to which it is proposed to increase such indebtedness, and shall in all other respects contain the same matters as are above provided and set forth in the notice of meeting to increase or diminish the capital stock; or such original creation of bonded indebtedness may be made as otherwise in this section provided.

Fourth. In addition to the notice by publication, when proceedings are to be had hereunder at a meeting of stockholders, the secretary of the corporation shall also address a notice to each of the stockholders whose names appear on the company's books as sufficiently addressed or identified, at his place of residence, if known, and if not known, then at the place in which the principal place of business of the corporation is situate, which notice shall be so mailed to such stockholders at least thirty days before the day appointed for such meeting.

Fifth. In lieu of such call for meeting of stockholders and of such notice and publication of the same and of a stockholders' meeting held in pursuance thereof and of said vote thereat representing at least two-thirds of the subscribed capital stock, any corporation may diminish its capital stock and also originally create its

bonded indebtedness by a resolution adopted by the unanimous vote of its board of directors or trustees at a regular meeting or at a special meeting called for that purpose and approved by the written assent or assents of the stockholders holding two-thirds of the subscribed or issued capital stock, which assent or assents must be filed with the secretary of the corporation; but the secretary of the corporation must address by mail, postage fully prepaid, a copy of such resolution to each of the stockholders whose names appear upon the company's books as sufficiently addressed or identified, at his place of residence, if known, and if not known, then at the place in which the principal place of business of the corporation is situate, which notice shall be so mailed to such stockholders at least thirty days before the certificate hereinafter provided is made and signed or filed, as hereinafter provided, and within that time any stockholder may file with such secretary his dissent in writing; but it is further provided that if at any time within said thirty days such written assent or assents of the stockholders holding all of the subscribed or issued capital stock be so filed with said secretary, then and at once and without further delay the certificate hereinafter provided for may be so made, signed and filed as hereinafter provided and with the same effect, but such capital stock can not be diminished to an amount less than the indebtedness of the corporation, and no increase of capital stock or bonded indebtedness can be made, except at a meeting of stockholders as in this section provided.

Sixth. Any two or more corporations may by a separate compliance by each corporation with the provisions of this section applicable in the premises in respect to creating or increasing bonded indebtedness, create or increase a consolidated bonded indebtedness of such corporations, to be binding jointly and severally on such corporations, and which may be secured by a consolidated mortgage or deed of trust executed by all such corporations, mortgaging or conveying in trust all or any of the properties of all such corporations, acquired or to be acquired.

Seventh. Upon such increase or diminution of the capital stock or creation or increase of the bonded indebtedness being made in accordance with the provisions of this section there shall be made, if proceedings are had under subdivisions first, second, third and fourth above, a certificate under the corporate seal and signed by the president and secretary of the corporation or of each corporation acting in the premises and a majority of the directors or trustees of such corporation, or each corporation so acting, showing a compliance by such corporation, or each corporation so acting, with the requirements of said last named subdivisions and the amount to which the capital stock has been increased or diminished or the amount of the bonded indebtedness created, or to which the bonded indebtedness may have been increased, and the amount of stock represented at the meeting and the total vote in the affirmative by which the same was accomplished and the total vote in the negative; or if such proceedings be had and taken under subdivision fifth of this section as to diminution of capital stock or original creation of bonded indebtedness a like certificate shall be made and sealed and signed, as aforesaid, showing a compliance by such corporation, and by each corporation acting in the premises, with the requirements of said subdivision fifth, and the amount to which the capital stock has been diminished or the amount of bonded indebtedness so originally created, and the total amount of the stock represented by the said written assent or assents so filed with the secretary and the total amount of stock represented by the said written dissent or dissents so filed. In case of a consolidated bond of indebtedness each corporation which is a party thereto shall cause to be made and signed and sealed and verified and filed, as in this section provided, a separate certificate.

Eighth. In all cases the certificates shall state the total number of subscribed or issued shares of the capital stock of the corporation, or of each corporation respectively acting in the premises, and shall be verified by the oath of the said president and secretary, or of the said respective presidents and secretaries. Such consolidated bonded indebtedness may be created or increased to an amount equal to the par or face value of the aggregate amount of the subscribed or issued capital stocks of said two or more corporations, but shall not exceed such aggregate amount. In each and every case the certificate must be filed in the office of the clerk in the county or city and county where the original articles of incorporation of the corporation or corporations acting hereunder are filed and a certified copy thereof, certified by such clerk, shall be filed in the office of the secretary of state; and there-

upon the capital stock shall be so increased or diminished, or the bonded indebtedness or consolidated bonded indebtedness shall be created or increased accordingly, and such certificate or certificates so filed shall be, when said certified copy or copies are so filed, conclusive proof of such increase or diminution of capital stock or such creation or increase of bonded or consolidated bonded indebtedness and the validity of each thereof. When the by-laws of a corporation prescribe the paper in which notices of meetings of directors or trustees or stockholders are to be published the notices of publication herein provided for shall be published in such paper, unless publication thereof shall have ceased.

**Sec. 360. Corporations may acquire real property, and how much.** No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. A corporation may acquire real property, as provided in title seven, part three, of the code of civil procedure, when needed for any of the uses and purposes mentioned in said title. By a unanimous vote of all the directors at any regular meeting, any corporation existing, or hereafter to be formed under the laws of this state, may acquire and hold the land and building on and in which its business is carried on, and may improve the same to any extent required for the convenient transaction of its business.

[Sec. 361. Repealed.]

**Sec. 361a. Sale, lease, or transfer of business or franchise.** No sale, lease, assignment, transfer or conveyance of the business, franchise and property, as a whole, of any corporation now existing, or hereafter to be formed in this state, shall be valid without the consent of stockholders thereof, holding of record at least two-thirds of the issued capital stock of such corporation; such consent to be either expressed in writing, executed and acknowledged by such stockholders, and attached to such sale, lease, assignment, transfer, or conveyance, or by vote at a stockholders' meeting of such corporation called for that purpose; but with such assent, so expressed, such sale, lease, assignment, transfer, or conveyance shall be valid; provided, however, that nothing herein contained shall be construed to limit the power of the directors of such corporation to make sales, leases, assignments, transfers, or conveyances of corporate property other than those hereinabove set forth.

**Sec. 362. Articles of incorporation, how amended.** Any corporation may amend its articles of incorporation by a majority vote of its board of directors or trustees, and by a vote or written assent of the stockholders representing at least two-thirds of the subscribed capital stock of such corporation, or the written assent of the majority of the members if there is no capital stock; and a copy of the said articles of incorporation, as thus amended, duly certified to be correct by the president and secretary of the board of directors or trustees of such corporation, shall be filed in the office where the original articles of incorporation are filed, and a certified copy thereof, duly certified by such county clerk, in the office of the secretary of state. A copy of such articles of incorporation, so amended, duly certified by the secretary of state, must be filed in the office of the county clerk of every county in which such corporation has or holds property, except only the county in which the original amended articles of incorporation have been filed. Any corporation which shall amend its articles of incorporation and shall fail to file copies of its amended articles, as required by the preceding sentence, shall be subject to the penalties and liabilities provided in section two hundred and ninety-nine for a failure of corporations to file copies of their articles of incorporation in the offices of the county clerks of the counties in which they shall purchase, hold, or locate property, and from the time of so filing such copy of the amended articles of incorporation, such corporation shall have the same powers, and the stockholders thereof shall hereafter be subject to the same liabilities, as if such amendment had been embraced in the original articles of incorporation. Such original and amended articles of incorporation shall together contain all the matters and things required by the laws under which the original articles of incorporation were executed and filed. Nothing contained in this section must be construed to cure or amend any defect existing in the original articles of incorporation heretofore filed, in that such articles did not set forth the matters required to make the same valid at the time of filing. If the assent of two-thirds of said stockholders, or of the majority of members where there is no capital stock, to such amendment has not been obtained, a notice of the intention to make such amendment must first be advertised for thirty days in some newspaper published

in the town, city, county, or city and county in which the principal place of business of the corporation is located, before the filing of the proposed amendment. Nothing in this section shall be construed to authorize any corporation to increase or diminish its capital stock, change its name, extend its corporate existence, or increase or diminish the number of its directors, without complying with the special provisions of this code applicable thereto.

**Sec. 363. Erroneous filing of articles of incorporation, how corrected.** When articles of incorporation have been prepared, subscribed, and executed in accordance with the provisions of sections two hundred and ninety and two hundred and ninety-two of the civil code, and such original articles filed by error or inadvertence with the clerk of a county other than that named in the articles of incorporation as the county in which the principal place of business is to be transacted, and the secretary of state shall have issued a certificate of incorporation based on a certified copy of such original articles of incorporation, any stockholder or director of such corporation may petition the superior court of the county in which said original articles of incorporation were filed for an order to withdraw such original articles of incorporation, and file in place thereof a certified copy of the copy thereof on file in the office of the secretary of state. Such petition must be verified, and must state clearly the facts, showing that such articles of incorporation were filed by inadvertence and mistake; and notice of the hearing of said petition must be given for at least ten days before the day of hearing, by publication in a newspaper published in the county where such petition is filed. Upon the day set for hearing the petition, the superior court may grant an order allowing such original articles of incorporation to be withdrawn, and a certified copy of the copy in the office of the secretary of state in the place thereof filed; and the original articles of incorporation must be filed within ten days thereafter in the county in which the principal place of business is to be transacted, as stated in such articles of incorporation, and a certified copy of the order allowing such action must be filed with the certified copy in the office of the secretary of state, after which said corporation shall be entitled to all rights and privileges of a private corporation, and the title to any property it may have previously acquired shall not be affected by reason of the failure to file the original articles of incorporation in the first instance.

**Sec. 364. Sale of concessions or property in foreign country.** Any corporation of this state owning grants, concessions, franchises, and properties, or any thereof, in any foreign country, may sell and convey the same to the government of such foreign country, or to any person or persons, or any corporation or corporations, or association or associations, created by or existing under the laws of this or any other state or the United States, or any foreign government; provided, however, that the powers hereby granted shall only be exercised by a majority of the entire board of directors of such corporation of this state, with the concurrence in writing of the holders of two-thirds in amount of the capital stock thereof.

**Sec. 365. Lost or destroyed records.** Whenever it shall appear that the minutes, records, seal, assessment book, stock journal, stock ledger, certificate book, certificate of stock or bonds or other papers or records of any corporation, municipal, quasi or otherwise, in this state, shall have been or shall hereafter be lost or destroyed by conflagration or other public calamity, such corporation, by a vote of its board of directors, or any stockholder or bondholder of such corporation, may petition the superior court of the county, or city and county, in which the principal place of business of such corporation is located, to restore such lost, destroyed, or injured minutes, records, seal, assessment book, stock journal, stock ledger, certificate book, certificate of stock or bonds or other papers or records. Such petition shall state the loss, destruction or injury to any such records or documents or certificates of stock or bonds, or other papers or records, or any part or portion thereof, giving the cause of such loss, injury or destruction. On the filing of such petition, duly verified, said superior court shall make an order, fixing a time and place for the hearing of the same, and directing the clerk of the court to give notice of such a hearing by publication of a notice stating the time and place of the hearing of said petition and the purpose thereof, which time shall not be less than twenty-five nor more than thirty days from the completion of such publication. Notice of such hearing shall be given by publication in some newspaper of general circulation, printed and published in such county, or city and county, where the principal place of business of said corporation is located, and if there be no such newspaper published

in said county, or city and county, then in some adjoining county, to be designated by the court or judge thereof, which publication shall be daily (except Sundays) for a period of at least three successive weeks. In case there is no daily newspaper published in either of said counties then such notice shall be published once a week for three successive weeks in a weekly newspaper published in such county. A copy of said notice shall also be personally served upon all persons affected thereby residing in the state of California, whose place of residence or place of business is known to the corporation or any of its officers, if such person can be found within the state, which service may be made at any time during said period of publication. If the place of business or place of residence of any persons affected by said petition or proceeding is unknown to the corporation or any of its officers, within forty-eight hours after the filing of said petition, a copy of said notice shall be mailed to each of the persons affected by said petition or proceeding whose place of residence or place of business is unknown to said corporation or any of its officers, addressed to them, postage prepaid, at the county seat of the county, or county and city, where the place of business of said corporation is located. In addition to the notice by publication, the petitioner shall address a copy of said notice to each of the stockholders of said corporation, and also to each of the persons affected by said petition, whose names and places of residence or business are known to the corporation or any of its officers, at his place of business or residence, postage prepaid, which notice shall be mailed to such stockholders or person within forty-eight hours after the filing of said petition. The court before proceeding to hear the case, shall require proof to be made that notice has been published and given as hereinbefore required and service of such notice personally if the same has been so served and if the same has not been so served, an affidavit of the petitioner stating the reasons why such personal service has not been made, shall also be then filed. Upon the completion of said publication, said court shall have jurisdiction to inquire into and determine the loss, injury or destruction of such minutes, records, seal, assessment book, stock journal, stock ledger, certificate book, certificates of stock or bonds, or other papers and documents, and to fix and determine by its judgment or decree, the ownership of said certificates of stock or bonds and the persons entitled thereto, and to direct such corporation to restore its records, seal, assessment book, stock journal, stock ledger, certificate book, certificates of stock or bonds or any other paper or record so lost, injured or destroyed, and to issue new bonds or certificates of stock or other paper or document to any person or persons to whom the same may belong or who may be entitled thereto, as determined by the judgment of the court. Any stock, bond or other paper, the ownership of which can not be determined, shall be found by the court, by its judgment, to belong to unknown owners, and in all proceedings of such corporation, including proceedings for assessment of stock, and the collection of such assessment, and the payment of dividends, and notice of sale and sale for delinquent assessments, said stock or dividends shall be so designated as belonging to unknown owners, without giving the name of the owner thereof or the number of the certificate or series or issue.

#### *Article II. Records.*

**Sec. 377. Records of what, and how kept.** All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered in full, all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation.

**Sec. 378. Other records to be kept by corporations for profit, and others.** In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "stock and transfer book," in which must be kept a record of all stock; the names of the stockholders or members, alphabetically arranged; installments paid or unpaid; assessments levied and paid



or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member, or creditor.

*Article III. Examination of corporations, etc.*

**Sec. 382. Examination into affairs of corporations, how made by officers of state.** The attorney general or district attorney, whenever and as often as required by the governor, must examine into the affairs and condition of any corporation in this state, and report such examination, in writing, together with a detailed statement of facts, to the governor, who must lay the same before the legislature; and for that purpose the attorney general or district attorney may administer all necessary oaths to the directors and officers of any corporation, and may examine them on oath in relation to the affairs and condition thereof, and may examine the books, papers, and documents belonging to such corporation, or appertaining to its affairs and condition.

**Sec. 383. Examination made by the legislature.** The legislature, or either branch thereof, may examine into the affairs and condition of any corporation in this state at all times; and for that purpose, any committee appointed by the legislature, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof; and may examine the safes, books, papers, and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers, and documents, by summary process, to be issued on application to any court of record or any judge thereof, under such rules and regulations as the court may prescribe.

*Article IV. Judgment against and sale of corporate property.*

**Sec. 388. Franchise may be treated as property, and sold under execution.** For the satisfaction of any judgment against any person, company, or corporation having any franchise other than the franchise of being a corporation, such franchise, and all the rights and privileges thereof, may be levied upon and sold under execution, in the same manner, and with the same effect, as any other property.

**Sec. 389. Purchaser to transact business of corporation.** The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same, as hereinafter provided.

**Sec. 390. Purchaser may recover penalties, etc.** The purchaser, or his assignee, is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages, or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same.

**Sec. 391. Corporation to retain powers after sale.** The person, company, or corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale.

**Sec. 392. Redemption.** Redemption from any such sale may be had as provided in the code of civil procedure in the case of redemptions from sales of real estate on execution.

**Sec. 393. Sale under execution, where made.** The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, is situated.

**Chapter IV. Extension and dissolution of corporations.**

**Sec. 400. On dissolution, directors to be trustees for creditors.** Unless other persons are appointed by the court, the directors or managers of the affairs of a corporation at the time of its dissolution are trustees of the creditors and stock-



holders or members of the corporation dissolved, and have full power to settle the affairs of the corporation.

**Sec. 401. Extension of corporate existence, how made.** Every corporation formed for a period less than fifty years, may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension may be made at any meeting of the stockholders or members called by the directors expressly for considering the subject if voted by stockholders representing two-thirds of the capital stock; or by two-thirds of the members; or may be made upon the written assent of two-thirds of the members or of stockholders representing two-thirds of the capital stock. A certificate of the proceedings of the meeting upon such vote, or upon such assent, must be signed by the chairman and secretary of the meeting and a majority of the directors, and be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the term of the corporation is extended for the specified period.

Every corporation heretofore or hereafter formed, and existing under the laws of this state, may at any time prior to the expiration of the term of its corporate existence extend such term to a period not exceeding fifty years from the date of such extension. Such extension may be made at any meeting of the stockholders, or members, called by the directors expressly for considering the subject, if voted for by stockholders representing two-thirds of the capital stock; or by two-thirds of the members where there is no capital stock; or may be made upon the written assent of two-thirds of the members or of stockholders representing two-thirds of the capital stock. A certificate of such vote or assent shall be signed and sworn to by the president and secretary and by a majority of the directors of the corporation, and filed in the office of the county clerk where the original articles of incorporation were filed, and a copy certified by such clerk shall be filed in the office of the secretary of state, and thereupon the term of existence of the corporation shall be extended for the period specified in such certificate. The fees for certifying such certificate and filing the same and the certified copy thereof, shall be the same as those prescribed by law for certifying and filing articles of incorporation in such cases. In no event shall such extension be construed to prolong or extend the duration of any franchise or privilege heretofore granted to any corporation or joint stock company by special legislative act, or by the municipal authorities of any county, city, city and county, town, or other political subdivision of this state, beyond the term fixed by the provisions of the act, ordinance, or resolution conferring such privilege or franchise, or beyond the term fixed for the maximum period of existence of such corporation or joint stock company by laws in force and governing the formation and organization thereof at the time such corporation or joint stock company was formed or organized.

[Sec. 402. Repealed.]

#### Chapter V. General provisions affecting corporations.

**Sec. 403. Title one to apply to all corporations, with certain exceptions.** The provisions of this title are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in this title, in which case the special provision prevails.

**Sec. 404. Power of the legislature to amend or repeal this part, or any title, chapter, article, or section thereof, and to dissolve all corporations created thereunder.** The legislature may at any time amend or repeal this part, or any title, chapter, article, or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred.

#### Chapter VI. Foreign corporations.

**Sec. 405. Designation of person on whom process may be served. Service on the secretary of state, when valid.** Every corporation other than those created by or under the laws of this state must, at the time of filing the certified copy of its articles of incorporation, file in the office of the secretary of state a designation of

some person residing within the state upon whom process issued by authority of or under any law of this state may be served. A copy of such designation, duly certified by the secretary of state, is sufficient evidence of such appointment. Such process may be served on the person so designated, or, in the event that no such person is designated, then on the secretary of state, and the service is a valid service on such corporation.

**Sec. 406. Foreign corporations, statute of limitations in favor of. Proof of corporate existence. Change of designation.** Every corporation which complies with the provisions of this chapter is thereafter entitled to the benefit of the laws of this state limiting the time for the commencement of civil actions, but no corporation not created by or under the laws of this state is entitled to the benefit thereof, nor can any such corporation maintain or defend any action or proceeding in any court of this state until the corporation has complied with the provisions of the preceding section. In any action or proceeding instituted against any body styled as a corporation, but not created by nor under the laws of this state, evidence that such body has acted as a corporation, or employed methods usually employed by corporations, must be received by the court for the purpose of proving the existence of such corporation, the sufficiency of such evidence to be determined by the court with like effect as in other cases. Every corporation which has complied with the laws then in force, requiring it to make and file a designation of the person upon whom process against it may be served, need not make or file any further designation. Any designation heretofore or hereafter made may be revoked by the filing by the corporation with the secretary of state of a writing stating such revocation. Within forty days after the death or removal from the state of any person designated by the corporation, or after the revocation of the designation, the corporation must make a new designation, or be subject to the provisions and penalties of this chapter.

**Sec. 407. Foreign railway corporations, rights of, in this state.** Every railway or other corporation organized for the purpose of carrying freight or passengers under or by virtue of the laws of the United States, or of any state or territory thereof, may build railroads, exercise the right of eminent domain, and transact any other business which it might do if it were created and organized under or by virtue of the laws of this state, and has the same rights, privileges, and immunities, and is subject to the same laws, penalties, obligations, and burdens as if created or organized under and by virtue of the laws of this state. Nothing contained in this section shall be construed to exempt any corporation from any duty or liability imposed upon it by any of the provisions of this chapter.

**Sec. 408. Foreign corporations to file certified copies of articles of incorporation.** Every corporation organized under the laws of another state, territory, or of a foreign country, which is now doing business in this state, or is maintaining an office herein, or which shall hereafter do business in this state or maintain an office herein, or which shall enter this state for the purpose of doing business herein, must file in the office of the secretary of state of the state of California a certified copy of its articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental act or acts creating it, in cases where it has been created by charter, or statute, or legislative, or executive, or governmental act, duly certified by the secretary of state, or other officer authorized by the law of the jurisdiction under which such corporation is formed to certify such copy, and a certified copy thereof, duly certified by the secretary of state of this state, in the office of the county clerk of the county where its principal place of business is located, and also where such corporation owns property.

**Sec. 409. Foreign corporations, fees to be paid by, on filing certified copies of articles of incorporation.** For filing and issuing a certified copy as required in section four hundred and eight of this code, corporations formed under the laws of another state, or of a territory, or of a foreign country, must pay the same fees as are paid by corporations formed under the laws of this state.

**Sec. 410. Foreign corporations, penalty for failure to file certified copies of articles of incorporation.** Every corporation organized under the laws of another state, territory, or of a foreign country, which shall neglect or fail, within ninety days from the taking effect of this section, to comply with the conditions of sections four hundred and eight and four hundred and nine of this code, shall be subject to a fine of not less than five hundred dollars, to be recovered in any court of competent jurisdiction; and it is hereby made the duty of the secretary of state, as he

may be advised that corporations are doing business in contravention of sections four hundred and eight and four hundred and nine of this code, to report the fact to the governor, who shall instruct the district attorney of the county wherein such corporation has its principal place of business, or the attorney general of the state, or both, as soon as practicable, to institute proceedings to recover the fine provided for in this section, and the amount so recovered must be paid into the state treasury to the credit of the general fund of the state; in addition to which penalty, no foreign corporation which shall fail to comply with sections four hundred and eight and four hundred and nine of this code can maintain any suit or action in any of the courts of this state until it has complied with said sections; provided, that any such corporation which, prior to the 8th day of March, 1901, shall have complied with the provisions of the act entitled "An act to amend 'An act in relation to foreign corporations' approved April 1, 1872," approved March 17, 1899, is exempted from the provisions of this section and the two sections next preceding.

### **Title XIX. Co-operative business corporations.**

**Sec. 653a. Purposes for which may be formed.** Co-operative business corporations may be formed for doing any lawful business, and dividing a portion of their profits among persons other than their stockholders. Each of such corporations may, in its by-laws, in addition to the matters specified in section three hundred and three, provide the amount of profits which must be divided among persons other than its stockholders, and the manner in which and the persons among whom such division may be made.

### **Title XX. Co-operative business associations.**

**Sec. 653b. Formation and purposes of.** Five or more persons may form a co-operative association for the transaction of any lawful business, whether for profit or not, or for the promotion of any educational, industrial, benevolent, social, or political purpose. Such association must not have any capital stock, but must issue membership certificates to each member. Such certificate can not be assigned, so that the assignee can, by its transfer, become a member of the association, but, by a resolution of its board of directors, such certificate may be transferred, and the transferee made a member in lieu of the last former holder.

**Sec. 653c. Rights, interests, and liabilities of members.** In such association the rights and interests of all members are equal, and no member can have or acquire a greater interest therein than any other member has. At every election held pursuant to the by-laws each member must be entitled to cast one vote and no more. All persons above the age of eighteen years, regardless of sex, are eligible to membership, if otherwise qualified and elected as the by-laws may provide. The by-laws must provide for the amount of the indebtedness which such association may incur. And no member shall be responsible individually, or personally liable, for any of the debts or liabilities of the association in excess of his proportion of such indebtedness; but in case of the failure and insolvency of such association, may be required to pay any unpaid dues or installments which have, before such insolvency, become due from such member to the association, pursuant to its by-laws.

**Sec. 653d. The articles of association.** Every association formed under this title must prepare articles of association, in writing, stating: The name of the association, the purpose for which it is formed, the place where its principal business is to be transacted, the term for which it is to exist, not to exceed fifty years, the number of the directors thereof, and the names and residences of those selected for the first year, the amount which each member is to pay upon admission as membership fee, and that each member signing the articles has actually paid in such sum, and that the interest and right of each member therein is to be equal. Such articles of association must be subscribed by the original associates or members, and acknowledged by each before some person competent to take an acknowledgment of a deed in this state. Such articles so subscribed and acknowledged must be filed in the office of the clerk of the county wherein the principal business of the association is to be transacted, and a copy thereof certified by such clerk, with the secretary of state, who must thereupon issue his certificate in the form, and having the effect prescribed in section two hundred and ninety-six.

**Sec. 653e. The by-laws.** Every association formed under this title must, within forty days after it so becomes an association, adopt a code of by-laws for the

government and management of the association, not inconsistent with this title. A majority of all the associates is necessary to the adoption of such by-laws, and the same must be written in a book, and subscribed by the members adopting the same, and the same cannot be amended or modified except by the vote of a majority of all the members, after notice of the proposed amendment, given as the by-laws may provide. Such association may, by its by-laws, provide for the time, place, and manner of calling and conducting its meetings; the number of directors, the time of their election, their term of office, the mode and manner of their removal, the mode and manner of filling vacancies in the board caused by death, resignation, removal, or otherwise, and the power and authority of such directors, and how many thereof are necessary to the exercise of the powers of such directors, which must be at least a majority; the compensation of any of the directors, or of any officer; the number of the officers, if any, other than the directors, and their term of office; the mode of removal, and the method of filling a vacancy; the mode and manner of conducting business; the mode and manner of conducting elections, and may provide for voting by ballots forwarded by mail or otherwise, provided the method secures the secrecy of the ballot; the mode and manner of succession of membership, and the qualifications for membership, and on what conditions, and when membership must cease, and the mode and manner of expulsion of a member, subject to the right of an expelled member to have the board of directors appraise his interest in the association in either money, property, or labor, as the directors may deem best, and to have the money, property, or labor so awarded him paid, or delivered, or performed within forty days after expulsion; the amount of membership fee, and the dues, installments, or labor which each member must be required to pay or perform, if any, and the manner of collection or enforcement, and for forfeiting or selling of membership interest for non-payment, or non-performance; the method, time, and manner of permitting the withdrawal of a member, if at all, and how his interest must be ascertained, either in money or property, and within what time the same must be paid or delivered to such member; the mode and manner of ascertaining the interest of a member at his death, if his legal representatives or none of them desire to succeed to the membership, and whether the same must be paid to his legal representatives in money, or property, or labor, and within what time the same must be paid, or delivered, or performed; such other things as may be proper to carry out the purpose for which the association was formed. The by-laws must provide for the time and manner in which profits must be divided among the members, and what proportion of the profits, if any, must be added to the common property or funds of the association. But the by-laws may provide that the directors may suspend or pass the payment of any such profit, or installment of earnings, at their discretion. The by-laws and all amendments must be recorded in a book and kept in the office of the association, and a copy, certified by the directors, must be filed in the office of the county clerk where the principal business is transacted.

**Sec. 653f. Execution against the association or its members.** The property of such association is subject to attachment and execution for its lawful debts. The interest of a member in such association, if sold upon execution, or any judicial or governmental order whatever, can not authorize the purchaser to have any right, except to succeed, as a member in the association, with the consent of the directors, to the rights of the member whose interest is thus sold. If the directors choose to pay or settle the matter after such sale, they may either cancel the membership, and add the interest thus sold to the assets or common property of the association, or reissue the share or right to a new member upon proper payment therefor, as the directors may determine.

**653g. Purposes of the association, how may be altered.** The purpose of the business may be altered, changed, modified, enlarged, or diminished by a vote of two-thirds of all the members, at a special election to be called for such purpose, of which notice must be given the same as the by-laws provide for the election of directors.

**653h. Powers of the association.** Every association formed under this title has power of succession by its associate name for fifty years; in such name to sue and be sued in any court; to make and use a common seal, and alter the same at pleasure; to receive by gift, devise, or purchase, hold, and convey real and personal property, as the purposes of the association may require; to appoint such subordinate agents or officers as the business may require; to admit associates or members, and to sell or

forfeit their interest in the association for default of installments, or dues, or work, or labor required, as provided by the by-laws: to enter into any and all lawful contracts or obligations essential to the transaction of its affairs, for the purpose for which it was formed, and to borrow money, and issue all such notes, bills, or evidences of indebtedness or mortgage as its by-laws may provide for: to trade, barter, buy, sell, exchange, and to do all other things proper to be done for the purpose of carrying into effect the objects for which the association is formed.

**653i. Consolidation of associations.** Two or more associations formed and existing under this title, or under any preexisting law authorizing their formation for the same purposes, may be consolidated, upon such terms, and for such purposes, and by such name, as may be agreed upon, in writing, signed by two-thirds of the members of each such association. Such agreement must also state all the matters necessary to articles of association, and must be acknowledged by the signers before an officer competent to take an acknowledgment of deeds in this state, and be filed in the office of the county clerk of the county wherein the principal business of the association is to be transacted, and a certified copy thereof in the office of the secretary of state, and pay the same fees for filing and recording as required by this code for the filing and recording of the certified copy of the original articles of association; and from and after the filing of such certified copy, the former associations comprising the component parts cease to exist, and the consolidated association succeeds to all the rights, duties, and powers of the component associations, and is possessed of all the rights, duties, and powers prescribed in the agreement of consolidated association not inconsistent with this title, and is subject to all the liabilities and obligations of the former component associations, and succeeds to all the property and interests thereof, and may make by-laws and do all things permitted by this title.

**653j. Dissolution and winding up of association.** Any association formed or consolidated under this title may be dissolved and its affairs wound up voluntarily by the written request of two-thirds of the members. Such request must be addressed to the directors, and must specify reasons why the winding-up of the affairs of the association is deemed advisable, and must name three persons who are members to act in liquidation and in winding up the affairs of the association, a majority of whom must thereupon have full power to do all things necessary to liquidation; and upon the filing of such request with the directors, and a copy thereof in the office of the county clerk of the county where the principal business is transacted, all power of the directors ceases and the persons appointed must proceed to wind up the association, and realize upon its assets, and pay its debts, and divide the residue of its money among the members, share and share alike, within a time to be named in said written request, or such further time as may be granted them by two-thirds of the members, in writing, filed in the office of said county clerk; and upon the completion of such liquidation the said association must be deemed dissolved. No receiver of any such association, or of any property thereof, or of any right therein, can be appointed by any court, upon the application of any member, save after judgment of dissolution for usurping franchises at the suit of the state of California by its attorney general.

**Sec. 653k. Quo warranto to inquire into the right of an association to do business.** The right of any association claiming to be organized under this title to do business may be inquired into by quo warranto, at the suit of the attorney general of this state, but not otherwise.

**Sec. 653l. What corporations or associations are affected by this title.** This title is not applicable to railroads, telegraph, telephone, banking, insurance, building and loan, or any other corporation, unless the special provisions of this code, applicable thereto, are complied with.

## Code of Civil Procedure.

### Part III. Of special proceedings of a civil nature.

#### Title VI. Of the voluntary dissolution of corporations.

**Sec. 1227. How dissolved.** A corporation may be dissolved by the superior court of the county where its principal place of business is situated, upon its voluntary application for that purpose.

**Sec. 1228. Application, what to contain.** The application must be in writing, and must set forth: 1. That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a vote of two-thirds of the members or of the holders of two-thirds of the subscribed capital stock; 2. That all claims and demands against the corporation have been satisfied and discharged.

**Sec. 1229. Application, how signed and verified.** The application must be signed by a majority of the board of trustees, directors, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

**Sec. 1230. Filing application and publication of notice.** Upon the filing of the application, the clerk must give notice of the same for such time as the court may order, but not less than thirty nor more than fifty days, by publication in some newspaper published in the county; or if there be no newspaper published therein, then by notices posted in three of the principal public places in the county.

**Sec. 1231. Objections may be filed.** At any time before the expiration of the time of publication, any person may file his objections to the application.

**Sec. 1232. Hearing of application.** After the time of publication has expired, the court may, upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application, and if all the statements therein made are shown to be true, must declare the corporation dissolved. A certified copy of the decree and order of the court dissolving the corporation must be filed in the office of the secretary of state.

**Sec. 1233. Judgment roll and appeals.** The application, notices and proof of publication, objections (if there be any), and declaration of dissolution, constitute the judgment roll; and from the judgment an appeal may be taken, as from other judgments of the superior courts.

#### **Title IX. Of change of names.**

**Sec. 1275. Jurisdiction.** Applications for change of names must be heard and determined by the superior courts.

**Sec. 1276. Application for change of name, how made.** . . . Any religious, benevolent, literary, scientific, or other corporation, or any corporation bearing or having for its name, or using or being known by the name of any benevolent or charitable order or society, may, by petition, apply to the superior court of the county in which its articles of incorporation were originally filed, or in which the property of such incorporation is situated, for a change of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation, and must specify the date of the formation of the corporation, its present name, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings shall be had as upon applications for changes of names of natural persons, and no banking corporation hereafter organized shall adopt or use the name of any friendly association.

**Sec. 1277. Order to show cause; publication; proof of publication.** Upon the filing of the said petition the court shall thereupon make an order reciting the filing of the application, the name of the person or corporation by whom it is filed and the name proposed, and directing all persons interested in said matter to appear before the court, at a time and place specified, not less than four or more than eight weeks from the time of making such order, to show cause why the application for change of name should not be granted. A copy of the order to show cause must be published for four successive weeks in some newspaper of general circulation to be designated in the order, printed in the county, if a newspaper be printed therein, or, if no newspaper be printed in the county, a copy of such order to show cause shall be posted by the clerk of the court in three of the most public places in the county in which the court is held, for a like period. Proof must be made to the satisfaction of the court, of such publication, or posting, at the time of the hearing of the application.

**Sec. 1278. Hearing of application and remonstrance; corporations; change of name.** Such application must be heard at such time as the court may appoint, and objections may be filed by any person who can, in such objections, show to the court good reason against such change of name. On the hearing, the court may examine on oath any of the petitioners, remonstrants, or other persons, touching the application, and may make an order changing the name; or dismissing the application, as

to the court may seem right and proper; provided, that if the applicant for a change of name be a corporation, such applicant shall file in court at the time of hearing the application, the certificate of the secretary of state that the name desired to be used by the applicant is not the corporate name of any corporation existing at said time, and that said name does not so closely resemble the name of any such existing corporation as will tend to deceive.

**Sec. 1279. County clerk to file copy of decree with secretary of state.** A certified copy of the decree of the court, changing the name of a person or corporation, shall within thirty days from the date of such decree, be filed in the office of the secretary of state.

## **Penal Code.**

### **Title XIII. Crimes against Property.**

#### **Chapter XIII. Fraudulent insolvencies by corporations and other frauds in their management.**

**Sec. 557. Frauds in subscriptions for stock of corporations.** Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

**Sec. 558. Frauds in organization or increasing capital.** Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence, to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the state prison not less than three nor more than ten years.

**Sec. 559. Unauthorized use of names in prospectus.** Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement or announcement of any corporation or joint stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member, or promoter of such corporation or association, is guilty of a misdemeanor.

**Sec. 560. Misconduct of directors of stock corporations.** Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them by which it is intended, either: 1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or, 2. To divide, withdraw, or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or 3. To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payment; or, 4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or, 5. To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such other corporation; is guilty of a misdemeanor.

**Sec. 561. Officer of savings bank overdrawing account.** Every officer, agent, teller, or clerk of any savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, note, or funds of such bank, is guilty of a misdemeanor.

**Sec. 562. Receiving deposits in insolvent banks.** Every officer, agent, teller, or clerk of any bank, and every individual banker, or agent, teller, or clerk of any individual banker, who receives any deposits, knowing that such bank, or association, or banker is insolvent, is guilty of a misdemeanor.

**Sec. 563. Frauds in keeping accounts in books of corporations.** Every director, officer, or agent of any corporation or joint stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent, or member of any corporation or joint stock association who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to such corporation or association, or makes, or concurs in making, any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the state prison not less than three nor more than ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

**Sec. 564. Officer of corporation publishing false reports.** Every director, officer, or agent of any corporation or joint stock association, who knowingly concurs in making, publishing, or posting either generally or privately to the stockholders or other persons, any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or willfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, or refuses to make any book or post any notice required by law, in the manner required by law, is guilty of a felony.

**Sec. 565. Officer must permit inspection of books.** Every officer or agent of any corporation, having or keeping an office within this state, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

**Sec. 568. Directors presumed to know condition of corporation.** Every director of a corporation or joint stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of this chapter.

**Sec. 569. Director present at meeting, when presumed to assent.** Every director of a corporation or joint stock association, who is present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

**Sec. 570. Director when absent, when presumed to assent.** Every director of a corporation or joint stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.

**Sec. 571. Foreign, doing business in this state.** It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation was one created by the laws of another state, government, or country, if it was one carrying on business or keeping an office therefor within this state.

**Sec. 572. Director defined.** The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

---



## Canal Zone.

The codes in force in Panama at the time of the declaration of independence (3d November, 1903) were the Colombian civil, commercial, penal, and other codes. This law continued in force after the cession of the Canal Zone to the United States. By a letter of the President of the United States (May 9, 1904) the laws in force on February 26, 1904, were declared to be operative in the Canal Zone. The Colombian Judicial Code (Code of Civil Procedure) has been repealed and a code based upon that in force in the Philippine Islands has been adopted. The provisions of this code, in so far as they relate to corporations, are set forth below.

### Code of Civil Procedure.

**Sec. 185. When a receiver may be appointed.** A receiver may be appointed in the following cases: 1. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights ...

**Sec. 187. Receivers of a corporation.** When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights, the circuit court where the corporation has its principal place of business may, on complaint of a creditor of the corporation, or a stockholder or member thereof, appoint a receiver to take charge of its estate and effects, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the money and other properties that shall remain over among the stockholders or members.

**Sec. 209. Like actions against a corporation.** A like action may be brought against a corporation: 1. When it has offended against a provision of an act for its creation or renewal, or any act altering or amending such act; 2. When it has forfeited its privileges and franchises by non-user; 3. When it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges, and franchises; 4. When it has misused a franchise, privilege, or right conferred upon it by law, or when it has exercised a franchise, privilege, or right in contravention of law.

**Sec. 223. Judgment when corporation has forfeited its rights.** When, in any such action, it is found and adjudged that a corporation has, by an act done or omitted, surrendered, or forfeited its corporate rights, privileges, and franchise, or has not used the same during the term of five years, judgment shall be entered that it be ousted and excluded therefrom and that it be dissolved; but when it is found and adjudged that a corporation has offended in any matter or manner which does not by law work as a surrender or forfeiture, or has misused a franchise or exercised a power not conferred by law, but not of such a character as to work a surrender or forfeiture of its franchise, judgment shall be rendered that it be ousted from the continuance of such offense or the exercise of such power.

**Sec. 224. Appointment of receiver when corporation dissolved.** The court rendering a judgment dissolving a corporation shall appoint a receiver of all its assets, agreeably to section one hundred eighty-five, who shall proceed to administer the same in accordance with the provisions of sections one hundred eighty-six to one hundred ninety, inclusive.

**Sec. 225. How receiver placed in possession.** An officer of such corporation who refuses or neglects, upon demand, to deliver over to the receiver all money, property, books, deeds, notes, bills, obligations, and papers of every description and within its power or control, belonging to the corporation, or in any wise necessary for the settlement of its affairs, or the discharge of its debts and liabilities, shall be deemed guilty of a contempt of court, and shall be fined not exceeding twenty-five hundred dollars, and imprisoned until he complies with the order of the court, or is otherwise discharged by due course of law; and he shall be liable to the receiver for the value of all money or other things so refused or neglected to be surrendered, together with all damages that may have been sustained by the stockholders and creditors of the corporation, or any of them, in consequence of such neglect or refusal.

**Sec. 226. Judgment for costs.** If judgment be rendered in such action against a corporation or against a person claiming to be a corporation, the court may render

judgment for the costs against the directors or other officers of the corporation, or against the person claiming to be the corporation. If judgment be rendered for the defendant he shall recover his costs from the plaintiff, if the plaintiff be not the government.

**Sec. 227. Limitations.** Nothing herein contained shall authorize an action against a corporation for forfeiture of charter, unless the same be commenced within five years after the act complained of was done or committed; nor shall an action be brought against an officer to be ousted from his office within one year after the cause of such ouster, or the right to hold the office, arose.

**Sec. 446. Executing order of attachment as to stocks or shares.** Stocks or shares, or an interest in stocks or shares, of any corporation or company shall be attached by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the order of attachment and a notice stating that the stock or interest of the defendant is attached, in pursuance of such order.

## Connecticut.

### Laws, 1903, c. 194. An Act concerning Corporations.

#### Part I. General provisions.

**Sec. 1. Application.** The provisions of this part shall apply to all corporations heretofore and hereafter organized under any general or special law of this state, except when otherwise expressly stated, but shall not be held or construed to alter or affect any provision of any special charter inconsistent herewith, except as provided in section 37 of this act.

**Sec. 2. Name and location.** The name of every corporation hereafter formed shall be such as to distinguish it from any other corporation organized under the laws of this state and from any other corporation engaged in the same business or promoting or carrying out the same purposes in this state, and every such name shall be in the English language and shall begin with "The" and end with "Company" or "Corporation," or have the word "Incorporated" immediately after or under the name. Every corporation shall be located in some town in this state.

**Sec. 3. General powers.** Every corporation shall have power, subject to such provisions and limitations as may be contained in its charter, certificate of incorporation, articles of association, or in any statute affecting it: 1. To have succession by its corporate name for the time stated in its charter, certificate of incorporation, or articles of association, and, when no period is limited, perpetually; 2. To sue and be sued and complain and defend in any court; 3. To make and use a common seal and alter the same at pleasure; 4. To hold, purchase, sell, and convey such real and personal estate as the purposes of such corporation shall require, and all other property which shall have been in good faith mortgaged or conveyed to it by way of security or in satisfaction of debts or by purchase at sales upon judgments or decrees obtained for such debts or by purchase at sales upon judgments or decrees obtained for such debts; 5. To elect or appoint, in such manner as it may determine, all necessary or proper officers and agents and to fix their compensation and define their powers and duties; 6. To make by-laws, consistent with law, fixing the number of its directors and for its government, the regulation of its affairs, and the management of its property; 7. To wind up and dissolve itself, or to be wound up and dissolved, in the manner provided by law.

**Sec. 4. Power to transact business outside the state.** Every corporation organized under the provisions of this act, and every corporation heretofore or hereafter organized under any general or special law of this state, shall have power, subject to the limitations of its charter, certificate of incorporation, articles of association, or any statute affecting it, to carry on business in any state or territory of the United States, or in any foreign country, if not prohibited by the laws of such state or territory or foreign country.

**Sec. 5. Dividends restricted.** No corporation shall pay any dividend or make any other distribution of its assets except from its net profits or actual surplus, unless in accordance with the law allowing the reduction of stock, or upon the dissolution of the corporation. The secretary shall enter the name of every director

voting for any dividend, or any other distribution of the assets, upon the records of the corporation. Every director voting for a dividend or other distribution of assets in violation of this section shall be fined not more than five hundred dollars. If such payment or distribution renders a corporation insolvent, the directors so voting shall be jointly and severally liable, to the amount so paid or distributed, to any creditors existing at the date of such vote who shall obtain judgment against such corporation on which execution shall be returned unsatisfied. No such dividend shall be paid or distribution made unless duly voted by the directors of the corporation.

**Sec. 6. Liability for causing insolvency by reducing stock.** In case the reduction of the capital stock of any corporation shall render it insolvent, at the time of such reduction, the stockholders voting in favor of such reduction shall be jointly and severally liable, to the amount of such reduction, for all debts of the corporation existing at the time of such vote, after judgment has been obtained against the corporation and execution has been returned unsatisfied. The records of the corporation shall show the name of every stockholder voting in favor of such reduction. No such reduction shall be valid unless the names of the assenting stockholders appear of record as aforesaid, nor unless, within thirty days from the date of the vote authorizing such reduction, a copy of the certificate filed in the office of the secretary of the state shall be published twice a week for two successive weeks in a newspaper published in this state and having a circulation in the town in which such corporation is located.

**Sec. 7. New certificates.** The directors, after a reduction of capital stock, may require each stockholder to return his old certificate, and upon the return thereof shall issue a new certificate for the number of shares to which he is entitled after the reduction; and such corporation, after such reduction, may increase its capital stock to any amount authorized in its charter, certificate of incorporation, articles of association, or in any statute affecting it.

**Sec. 8. Loans to officers restricted.** No officer or director of any manufacturing corporation shall borrow any of the funds of the corporation or use the same for any purpose other than the business of the corporation without paying interest to such corporation for the use of such money, and without a majority vote of all the directors of such corporation and without furnishing adequate security for such loan.

**Sec. 9. Profits may be shared with employes.** Any corporation organized after May thirty-first, 1886, may by its board of directors distribute to the persons employed in its service, or any of them, such portion of the profits of its business as said board may deem just and proper. Any corporation organized on or prior to May thirty-first, 1886, may give to its board of directors the power to make such distribution by a majority vote of all the stockholders at a meeting warned and held for the purpose.

**Sec. 10. Directors.** The property and affairs of every corporation having a capital stock shall be managed by three or more directors, except that the charter of a specially chartered corporation may provide otherwise. Such directors shall be stockholders, except as hereinafter provided, and shall be chosen annually by the stockholders at such time and place as may be provided by the by-laws, and shall hold office for one year and until others are chosen and qualified in their stead; but the original or amended certificate of incorporation of any corporation to which the Corporation Act of 1901 now applies may provide for the classification of the directors, either as to their term of office, or as to their election by one or more classes of stockholders exclusively, or both; provided, that no director shall be elected for a shorter term than one year nor for a longer term than five years and the classification shall be such that the term of one or more classes shall expire each succeeding year. The directors or trustees of any corporation, or the governing board of any corporation having no directors or trustees, may fill any vacancy in their own number for the unexpired portion of the term or until such corporation shall fill such vacancy. A majority of the directors shall constitute a quorum for the transaction of business unless it is provided in a by-law adopted by a stockholders' meeting that less than a majority shall constitute a quorum. The board of directors of any corporation, by the affirmative vote of a majority of the whole board, may appoint from the directors an executive committee and such other committees as they may deem judicious, and, to such extent as shall be pro-

vided in the by-laws, may delegate to such committees any of the powers of the board of directors. If any corporation holds any stock in any other corporation, one director or executive officer of the corporation holding the stock as aforesaid may be chosen director of such other corporation whether he is a stockholder in such other corporation or not, but not more than one director or executive officer of the corporation holding the stock shall be a director in the other corporation unless eligible as a stockholder therein. At least once in each year the directors of every corporation shall make a full and detailed report of the financial condition of the corporation to its stockholders, which report shall be filed with the treasurer of the corporation, or, if there be no such officer, with the president, and be subject to the inspection of the stockholders at all reasonable times. Such report shall contain a statement of the number of shares of stock and the amount of other securities issued by any other corporation and owned by the corporation making the report, with the name and location of such other corporations. Subject to the by-laws adopted by the stockholders, the directors of any corporation may make and alter by-laws.

**Sec. 11. Corporation may acquire its own stock.** Any corporation not prohibited by any provision in its charter, articles of association, or certificate of incorporation or by any general law, except a bank, trust company, or life insurance company, may acquire, purchase, and hold the stock or securities of any other corporation. Any such corporation, except a bank, trust company, or life insurance company, may acquire, purchase, and hold its own stock. No corporation shall acquire, purchase, and hold its own stock unless to prevent loss upon a debt previously contracted, except with the approval of stockholders owning three-fourths of its entire outstanding capital stock given at a stockholders' meeting warned and held for the purpose; and such corporation shall not vote upon shares of its own stock. No corporation shall purchase any of its own stock when it is insolvent, or by such purchase render itself immediately insolvent. If any corporation shall purchase its own stock when it is insolvent, or so render itself immediately insolvent, the directors assenting to such purchase shall be personally liable for any debts of such corporation existing at the time of such purchase. The president and treasurer of every corporation acquiring its own stock under the provisions of this section shall, within six months thereafter, make, sign, and swear to and file in the office of the secretary of the state a certificate stating the number of shares of its own stock so acquired, and the secretary shall thereupon record such certificate in a book kept by him for that purpose.

**Sec. 12. Receipts for payment of stock subscription; directors' liability.** No corporation shall issue any certificates for stock until the stock has been subscribed and paid for in full. The treasurer of such corporation shall issue and deliver to each subscriber a receipt, countersigned by the secretary and under the corporate seal, stating the amount such subscriber has paid on his subscription, and the number of shares of full-paid and non-assessable stock for which he or his transferee, upon the payment of the balance due upon his said subscription, will be entitled to receive a certificate. Said officers shall enter upon such receipt the dates and amounts of all subsequent payments. The persons to whom such receipts are issued shall be deemed to be stockholders. If any stock shall be paid for otherwise than in cash, a majority of the directors shall make and sign upon the record book of the corporation a statement showing particularly of what the property received in payment for stock subscriptions consists, and that it has an actual value equal to the amount for which it is so received. The judgment of the directors as to the value of property accepted in payment of stock shall be final; but the directors concurring in the judgment of such value, in case of fraud in the over-valuation of such property, shall be jointly and severally liable to the corporation for the amount of the difference between the actual value of any property so accepted in payment at the time of such acceptance, and the amount for which it is received in payment. The secretary shall keep a record of the names of the directors concurring in such judgment of value.

**Sec. 13. Calls for stock subscriptions.** The directors of every corporation may call in the subscriptions to its capital stock by instalments in such proportion and at such times and places as they think proper, provided they give its subscribers or stockholders such notice as by-laws provide, or, in the absence of such provision such notice as they deem reasonable, of the amount of such instalments and the time when they are payable.

**Sec. 14. Stock subscriptions not made in good faith.** When any commissioners or incorporators authorized to receive subscriptions to the capital stock of any corporation shall be satisfied that any subscription is not made in good faith, they shall disallow it, and return to the person subscribing such instalment as has been paid by him.

**Sec. 15. Stock certificates.** Upon payment in full for his stock and the surrender of treasurer's receipts, if any, each stockholder shall be entitled to a certificate under the seal of the corporation, which shall be signed by the president or vice-president and by the secretary or assistant secretary or the treasurer or assistant treasurer, certifying the number of shares owned by him in such corporation.

**Sec. 16. Stockholders' liability.** Every stockholder, whether an original subscriber or not, shall be liable for any balance due on the stock held by him. If a corporation is placed in the hands of a receiver or a trustee in insolvency or bankruptcy, such receiver or trustee shall have the powers of the board of directors in calling in instalments on stock. If a creditor of a corporation shall obtain a judgment against it, and execution thereon shall be returned unsatisfied, such creditor may recover from any stockholder in such corporation the balance remaining due and unpaid on any stock held by him, so far as may be necessary to satisfy the debt. No subscriber for or holder of stock shall be liable as such for any payment of such stock, or for any debt of the corporation, after the par value of his stock has been paid.

**Sec. 17. Fractional shares or rights.** No certificate for fractions of shares shall be issued. Whenever fractional rights result from an increase or reduction of capital stock and the stockholders fail to combine the same by purchase or sale, the directors shall, after due notice, sell such rights to the highest bidder and issue proper certificates therefor.

**Sec. 18. Stock books.** At least three days before every stockholders' meeting, a complete list of the stockholders entitled to vote, arranged in alphabetical order, shall be prepared by the directors. Such lists shall be open to inspection by any stockholder at the time and place of the meeting. Upon the neglect or refusal of the directors to produce such list at any meeting, they shall be ineligible for election as directors or to any office in such corporation for one year thereafter. The stock ledger, if there be one, otherwise the transfer books of the corporation, shall be *prima facie* evidence as to who are stockholders. The original or duplicate books of any corporation in which the transfers of stock shall be registered, and the original or duplicate books containing the names and addresses of the stockholders and the number of shares held by them respectively, shall, at all times during the usual hours of business, be open to the examination of every stockholder at its principal office or place of business in this state, and such original or duplicate books shall be evidence in all courts of this state.

**Sec. 19. Lost certificates.** Every corporation may issue a new certificate of stock, or treasurer's receipt for payment on subscription for stock, in place of any certificate or receipt issued by it which is claimed to have been lost or destroyed, and the directors may, in their discretion, require the owner of a lost or destroyed certificate or receipt, or his legal representatives, to give a bond to the corporation in such sum as the directors may direct, not exceeding twice the value of the stock or receipt, to indemnify the corporation against any claim that may be made against it on account of the issue of such new certificate or receipt, and a new certificate or receipt may be issued without requiring any bond when, in the judgment of the directors, no bond is necessary. The superior court in the county wherein such corporation is located shall, for due cause shown, upon complaint of the owner of a lost or destroyed certificate or treasurer's receipt, order the delivery to him by said directors of a new certificate or receipt in lieu thereof, and may require a proper bond for the protection of the corporation and of any person who may be interested in the lost certificate or receipt.

**Sec. 20. Pledge of stock.** Shares of stock in any corporation organized under the laws of this state or of the United States, or treasurer's receipts for payment on subscription to the stock of any corporation organized under the laws of this state, may be pledged by delivering the certificate of such stock or such receipt to the pledgee, with a power of attorney for its transfer; but no such pledge shall be effectual to hold such stock against any person other than the pledgor, his executor, or administrator, unless there shall be an actual transfer of the same upon

the books of the corporation, or unless a copy of such power of attorney shall be filed with the corporation.

**Sec. 21. Stock transfer; corporation lien.** The stock of every corporation, except when otherwise provided in the charter of a specially chartered corporation, shall be personal property, and, with the treasurer's receipt for payments on stock subscriptions, shall be transferable only on its books in such form as the by-laws shall prescribe. Whenever any transfer of stock shall be made for collateral security, the entry of the transfer on the books of the corporation shall state that it is made for collateral security. Every corporation shall at all times have a lien upon all of its stock owned by any person for all debts, including instalments duly called in, due to it from him, and may sell the debtor's interest in said stock, or in so much thereof as may be necessary to discharge such indebtedness and the expense of such sale, at public auction at any time after the debt secured thereby becomes due and payable, upon giving to the stockholder, his executor or administrator, and if there be none, his heir-at-law, a written notice, by mail, of at least twenty days and advertising such sale at least twice in a newspaper of this state having a circulation in the town where such corporation is located, not less than one week prior to the date of sale. Any surplus arising from such sale shall be paid to the stockholder.

**Sec. 22. Calls for meetings; changes in by-laws.** All stockholders' meetings shall be held in this state and, except the first, at such time and place as shall be provided in the by-laws. A written or printed notice of every such meeting, stating the day, hour, and place thereof, shall be given by the president or secretary to each stockholder, by leaving such notice with him or at his residence or usual place of business, or by mailing it to him at his last known post office address, at least five days before such meeting. At any such meeting by-laws may be adopted, or the by-laws previously adopted may be altered or repealed. No by-law shall be adopted, and no existing by-law shall be amended or repealed, unless written notice of such proposed action shall have been given in the call for the meeting at which such adoption, amendment, or repeal is to be acted upon.

**Sec. 23. Special meetings, how called; waiver.** The president of every corporation may, and, upon the written request of three or more members of a corporation having no capital stock, or of one or more stockholders holding at least one-tenth of the capital stock of a corporation having capital stock, shall, call a special stockholders' meeting and cause legal notice thereof to be given. In case of the neglect or refusal of the president to call a meeting on such request, such stockholders may call the same. Whenever under any of the provisions of this act a corporation is authorized to take any action after notice to its stockholders or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of any period of time if such action be authorized and such requirements be waived in writing by every stockholder of such corporation or by his attorney thereto authorized.

**Sec. 24. Failure to hold meeting or elect officers.** Whenever any corporation shall have failed to hold its annual meeting or to elect officers thereat, and no provision is contained in its charter, articles of association, certificate of incorporation, or by-laws, or is made by law, otherwise than is provided in this section for such contingency, the officers of such corporation shall hold office until others shall be chosen in their stead, and a special or annual meeting may be called by the persons whose duty it is to call the annual meeting, or, on the neglect or refusal of such persons, by not less than three of the members of a corporation having no capital stock, or by the holders of one-tenth of the capital stock, of corporations having capital stock, by giving in writing such notice as is required in calling the annual meeting, and at such meeting the necessary officers may be elected, and the failure aforesaid shall not impair the rights of such corporation. Nothing in this section shall revive any corporation whose powers may have expired for any cause other than that hereinbefore named or any corporation which in fact shall have abandoned and ceased to exercise its powers and franchises.

**Sec. 25. Stockholders' vote; proxies.** At all stockholders' meetings stockholders may vote in person or by an attorney duly authorized by a written power. Every share of stock shall entitle the holder thereof to one vote except when otherwise provided in its charter or certificate of incorporation or in any statute affecting it, and persons holding stock in a fiduciary capacity and pledgors of stock shown

to be such by the record of transfer shall have the same voting rights upon shares of stock so held as any holder of such shares would have, except that pledgors in the transfer of stock may expressly empower the pledgees to vote thereon. No proxy hereafter made shall be valid after the expiration of eleven months from the date of its execution unless a longer term be expressly provided for therein.

**Sec. 26. Receivership of corporation.** Whenever any corporation having a capital stock has wilfully violated its charter or exceeded its powers, or whenever there has been any fraud, collusion, or gross mismanagement in the conduct or control of such corporation, or whenever its assets are in danger of waste through attachment, litigation, or otherwise, or such corporation has abandoned its business and has neglected to wind up its affairs and to distribute its assets within a reasonable time, or whenever its stockholders or directors have voted to discontinue its business, or whenever any good and sufficient reason exists for the dissolution of such corporation, any stockholder or stockholders owning not less than one-tenth of its capital stock or, in the case of a corporation not having capital stock, any member of such corporation may apply to the superior court in the county wherein such corporation is located, for the dissolution of such corporation and the appointment of a receiver to wind up its affairs. Such court may, if it finds that sufficient cause exists, appoint one or more receivers to wind up the business of such corporation, and may at any time, for sufficient cause shown, make a decree dissolving such corporation and terminating its corporate existence. Whenever such decree of dissolution is passed, it shall be the duty of the receiver or receivers to cause a certified copy thereof to be filed in the office of the secretary of the state, and said secretary shall thereupon record such certified copy in a book kept by him for that purpose. Such court, in every case in which it appoints a receiver, shall by its order limit a time, which shall not be less than four months from the date of such order, within which all claims against such corporation shall be presented, and all claims not presented within such time shall be forever barred. When such receivership shall be terminated by the court, the receiver or receivers shall file with the secretary of the state a certificate similar to the final certificate required of directors in section 34 of this act, and said secretary shall thereupon record such certificate in a book kept by him for that purpose.

**Sec. 27. Sale of property and franchises.** Said court may, in its discretion, in lieu of decreeing the dissolution of such corporation, order the receiver to sell its property and franchises; and the purchaser thereof shall succeed to all of the rights and privileges of such corporation, and may reorganize the same under the direction of said court. At any sale of such property at public auction, the court may, in its discretion, authorize the receiver to accept in payment duly allowed claims against such corporation, at a proper valuation.

**Sec. 28. Appraisal and purchase of minority stock interest.** Whenever a stockholder or stockholders holding not less than one-tenth of the whole amount of the capital stock of any corporation shall petition for its dissolution and the appointment of a receiver, pursuant to section 26 of this act, any other stockholder or stockholders may apply to said court for a valuation of the stock held by the petitioner by an appraiser to be appointed by the court. Said court may, for sufficient cause shown, appoint one or more persons to appraise such stock, who shall forthwith hear the parties interested, determine the value of the petitioner's stock, and file the appraisal with the clerk of said court. Said clerk shall at once give written notice to the parties interested that such appraisal has been filed, and, within ten days after the giving of such notice, the applicant for an appraisal shall file with said clerk a writing stating whether he elects to buy the petitioner's stock at the appraisal, and, if he does elect to buy it, he shall at the same time deposit the amount of such appraisal in money, or certified check, with said clerk, who shall forthwith notify the petitioner of the filing of such election and of the deposit. If such deposit is made as provided herein, said petition for a dissolution of the corporation and the appointment of a receiver shall be dismissed upon motion of such depositor. Such deposit shall be paid over to the petitioner by the clerk, on receipt of the certificates of his stock duly indorsed for transfer, to be delivered to the depositor. If such certificates are not so indorsed and received within thirty days from the time of such deposit, the money or check shall be returned to the depositor. If the applicant for appraisal shall fail to make such deposit, said action may proceed to final judgment. The expenses of the appraisal shall be taxed by



the court, and shall be paid by the stockholders applying for such appraisal, if they fail to deposit the amount of the appraisal required as aforesaid, but otherwise shall be taxed against the corporation and added to the final costs in the case.

**Sec. 29. Voluntary dissolution after commencing business.** Whenever the directors of a corporation shall vote to terminate its corporate existence, they shall forthwith call a special meeting of the stockholders, to be held not less than thirty nor more than forty days from the date of such call. Such call shall contain a copy of such vote and shall be published once a week for four weeks next preceding such meeting, in a newspaper of this state having a circulation in the town where such corporation is located, and a copy thereof shall be sent by mail to the last known address of each stockholder. If, at such meeting of the stockholders, three-fourths in interest of each class of stock issued shall vote to confirm such vote of the directors, the directors shall proceed forthwith to wind up the affairs of such corporation. If every stockholder shall sign and acknowledge, before an officer authorized to take acknowledgments of deeds, an agreement among stockholders that the corporate existence of such corporation shall be terminated, the vote of the directors and the confirming vote of the stockholders aforesaid may be dispensed with.

**Sec. 30. Directors trustees to wind up business.** The directors of a corporation whose existence is to be terminated pursuant to the vote or assent of its stockholders, as provided in section 29 of this act, shall be trustees to close up the business of such corporation. They shall forthwith prepare an inventory of its assets, make a list of its creditors with the amounts due to each, and collect its bills and accounts receivable. They shall, within two weeks after the date of the stockholders' vote of confirmation or agreement to dissolve the corporation, send a written notice of the proposed dissolution to every known creditor of such corporation warning him to present his claim and stating to whom and at what place such claim may be presented. They shall in such notice limit the time within which such claims shall be presented, which shall not be less than four months after the date of such stockholders' vote or agreement. They shall also publish, in some newspaper published in this state and having a circulation in the town where such corporation is located, a copy of such notice. Within one year from the date of such stockholders' vote or agreement the trustees shall sell all of the property of such corporation except money and uncollected accounts in litigation, at private sale or public auction. As soon as practicable, the trustees shall pay, in full or pro rata, all claims against such corporation which have been allowed by them or which may be found to be due by any proper tribunal and shall distribute the balance of the assets, if any, among the stockholders of such corporation.

**Sec. 31. Application to the court.** Such trustees may, in their discretion, bring their application to the superior court for the county within which such corporation is located, or to any judge of the superior court when such court is not in session, setting forth the facts of such proposed dissolution and praying the court, or such judge, to limit a period within which all claims against such corporation must be presented, and such court or judge may make an order limiting the time within which claims must be presented, which shall not be less than four months from the date of such order. Such trustees shall proceed to wind up the affairs of the corporation, in accordance with the provisions of section 30 of this act, under the direction of the court in the same manner as if they were receivers. The court may, for cause shown, extend the period within which the trustees shall sell the property of the corporation.

**Sec. 32. When claims shall be barred.** All claims not presented within the time limit in accordance with the provisions of sections 30 and 31 of this act shall be barred and any claim so presented and disallowed by such trustees shall be barred unless the owner thereof shall commence an action to enforce the same within four months after such trustees shall have given him written notice of its rejection.

**Sec. 33. Creditors not to interfere with control of property.** No creditor shall, by attachment or by any process or proceeding, interfere with the custody, control, or disposition of the property of the corporation by its directors acting as trustees for the winding up of the corporate affairs under the provisions of this act. But any creditor, pending such winding up, may apply to the superior court in the county in which the corporation is located, or to a judge thereof when such court is not actually in session, for the appointment of a receiver of such property on the ground



of fraud, mismanagement, or incompetency of such trustees, and such court or judge, upon finding that such trustees are incompetent or have been guilty of fraud or mismanagement in the discharge of their duties, shall appoint such receiver and the powers of such trustees shall thereupon terminate. But nothing herein contained shall prevent any person from establishing any claim against such corporation by an action at law, or shall prevent the foreclosure of any lien or mortgage existing at the time of such vote or assent to dissolve.

**Sec. 34. Certificates concerning dissolution.** Whenever the stockholders shall by vote or written assent agree to the dissolution of a corporation, a majority of the directors shall make, sign, and swear to and file in the office of the secretary of the state a certificate that such stockholders' vote has been duly passed or such assent duly given, and stating the address to which all claims against such corporation may be sent, and such secretary shall thereupon record such certificate in a book kept by him for that purpose. When the directors have completed their duties as trustees as aforesaid, a majority of them shall make, sign, and swear to and file in the office of the secretary of the state a further certificate stating that the directors have completed their duties in winding up the affairs of such corporation and have sold or collected all of its assets and distributed the same, stating the manner of such distribution. The secretary shall examine the same, and, if he finds that it conforms to law, shall indorse thereon the word "Approved," with his name and official title, and shall thereupon record such certificate in a book kept by him for that purpose. When such certificate has been approved by the secretary, the existence of such corporation shall terminate.

**Sec. 35. Certificate when corporate existence ends by limitation.** When the existence of a corporation terminates by limitation, a majority of the directors shall make, sign, and swear to and file in the office of the secretary of the state a certificate setting forth the facts as to such termination and stating the manner in which its affairs are to be wound up and the name and address of the person to whom claims may be presented by creditors of such corporation. The secretary shall thereupon record the same in a book kept by him for that purpose.

In all cases where any corporation, organized prior to August 1, 1901, had, before that date, voted to discontinue its business and distribute its capital stock among its stockholders, in accordance with the provisions of section 1943 of the general statutes, revision of 1888, and has heretofore applied to and obtained from the superior court in the county in which it is located, or a judge of said court in vacation, an order limiting a time not less than two months from the date of such order for the creditors of such corporation to present their claims against it to its directors as in said statute provided, the directors of such corporation, or a majority of them, may make, sign and swear to, and file in the office of the secretary of the state a certificate stating that the directors have completed their duties in winding up the affairs of such corporation, have sold and collected all its assets, paid and satisfied all claims presented to them against said corporation, and distributed the assets remaining in their hands to and among the parties entitled to the same. The secretary of the state shall examine said certificate, and if he finds that it conforms to the provisions of this act shall indorse thereon the word "Approved," with his name and official title, and shall thereupon record such certificate in a book kept by him for that purpose. When such certificate has been approved by the secretary of the state the existence of such corporation shall terminate. Laws, 1905, c. 121.

**Sec. 36. Corporate existence to be continued for certain purposes.** All corporations, whether they expire by their own limitation or are dissolved by voluntary action, by decree of court, or by act of the general assembly, shall continue so far as may be necessary to enable them to prosecute and defend suits by or against them, to close up their affairs, dispose of their property, and distribute their assets.

**Sec. 37. Annual reports.** [As amended by Laws, 1909, c. 160.] The president and treasurer of every corporation having capital stock, except banks, trust companies, insurance and surety companies, railroad or street railway companies, express companies, building and loan associations, and investment companies, shall, annually, on or before the fifteenth day of February or August, make, sign, and swear to and file in the office of the secretary of the state a certificate setting forth as of the first day of January or July immediately preceding: 1. The name, residence, and post office address of each of its officers and directors; 2. The amount of its outstanding capital stock which has not been paid for in full, with the amount due thereon; 3. The location of its principal office in this state, with the street and

number, if any there be, and the name of the agent or person in charge thereof upon whom process against the corporation may be served. The secretary shall thereupon record such certificate in a book kept by him for that purpose, and shall furnish a certified copy of such certificate to the persons filing the same, who shall forthwith cause such certified copy to be recorded in the office of the town clerk of the town in which such corporation is located, and said town clerk shall record the same in a book kept by him for that purpose. On the fifteenth day of March and September the town clerks of the several towns shall report to the secretary of the state the names of all corporations whose annual returns have been filed for record during the preceding six months, in accordance with the provisions of this section, and the secretary shall report to the attorney-general, every six months, the names of all corporations which have failed to comply with the provisions of this section, and the attorney-general shall collect all forfeitures due under this section. Every corporation whose officers shall fail to comply with the requirements of this section shall forfeit to the state one hundred dollars for each failure.

Whenever, by reason of absence, disability, or a vacancy existing in the office, the president of any corporation is unable to make, sign, and swear to the annual report provided for in section thirty-seven of chapter 194 of the public acts of 1903, such report may be signed and sworn to by the secretary of such corporation instead of by the president thereof; provided, however, that the secretary and treasurer be not the same person. Whenever a corporation shall be in the hands of a receiver, or a trustee in bankruptcy, or a trustee in insolvency, or whenever any foreign corporation which has appointed the secretary of the state its attorney has ceased to do business in this state and such fact is certified to and recorded by the secretary of the state, or whenever any domestic corporation has filed its first certificate of dissolution, no annual report shall be required of such corporation during the period aforesaid.

**Sec. 38. Annual returns by express companies; penalty.** Every corporation doing business in this state as an express company shall, on the first day of January of each year, file in the office of the secretary of the state a statement of the amount of its capital stock, the amount actually paid thereon in cash, the time when said stock was issued, the amount of its real estate, the place where such real estate is located and its cost and present value, the amount of personal estate held by the company and its cash value, the amount of bills, notes, bonds, or other commercial security held by the company and their value, the amount of loans and discount of the funds of the company to its officers within the year last past, the amount of its capital stock purchased and sold by it or its officers and agents for its use, the amounts paid within the year last past for permanent betterments of its real estate and improvement of equipment of its business, the gross amount of its receipts and disbursements within said year, the amount of surplus cash on hand during each month of said year, the amount of dividends paid in the same time, and the amount of its assets and liabilities. Every such corporation which shall fail to file such return for one month after said first day of January shall, for every month of such neglect thereafter, forfeit one thousand dollars to the state.

**Sec. 39. Information for creditor.** Every person having charge of the stock books of any corporation shall furnish information as to the number of shares held by any stockholder in such corporation to any applicant who shall furnish the person in charge of such books with an affidavit that the applicant is a creditor of such stockholder. Any person in charge of books as aforesaid refusing to give such information shall be fined not more than one hundred dollars.

**Sec. 40. Investment companies; bond issue limited.** Whenever the board of directors of any corporation organized for the purpose of lending money on real estate security, and issuing, negotiating, guaranteeing, and dealing in bonds and mortgage securities, shall vote that said corporation shall never issue and have outstanding at any one time bonds exceeding a certain amount specified in such vote, and said vote shall be ratified and approved by a vote of the stockholders of said corporation, a copy of such votes of the directors and stockholders, certified by the secretary and attested by the president and a majority of the directors, may be filed for record in the office of the secretary of the state, and thereafter said vote shall be a perpetual limitation upon the powers of such corporation.

**Sec. 41. Supervision of investment companies; guaranty limited.** Every corporation which has power to or does sell or negotiate its own choses in action, or

sell, guarantee, or negotiate the choses in action of other persons or corporations as investments, shall be under the supervision of the commissioner on building and loan associations and subject in that particular to all the laws relating to the examination and report of banks, savings banks, and trust companies. Said commissioner, in his annual report, shall clearly describe the various classes of assets and liabilities of each, and state any special provision which has been made for the payment of such liabilities. No corporation doing business as aforesaid shall guarantee, by indorsement or otherwise, debenture bonds secured by loans upon real estate to an amount exceeding ten times the amount of the capital stock paid up in cash and the cash surplus of said corporation.

**Sec. 42. Collection of taxes on shares.** When any corporation has power to impose a tax on its stock, it may appoint a collector thereof, who shall receive from its treasurer a rate bill, and a warrant signed by any justice of the peace, directing such collector to collect the sums specified in such rate bill; and on neglect of any stockholder to pay the tax due from him within the time limited by such corporation, the collector may levy such warrant on his shares, or such part thereof as may be necessary to satisfy such tax and costs, and shall proceed therein in the manner provided by law for the collection of executions when levied on the shares of the capital stock of a corporation; and the fees of such collector shall be the same as are allowed to officers on executions.

**Sec. 43. Alteration and repeal of charters.** All acts creating or authorizing the organization of corporations or altering the charters of corporations, which have been or shall be passed by the general assembly, and all charters under which no corporation has been organized, shall be subject to alteration, amendment, and repeal at the pleasure of the general assembly, unless otherwise expressly provided in such acts; but no such amendment or repeal shall impair any remedy against any such corporation or against its officers, directors, or stockholders, for any liability which shall have been previously incurred; and all such amendments shall apply to every corporation except in so far as is otherwise expressly provided.

**Sec. 44. Forms for certificates.** The secretary of the state shall prepare forms for the several certificates and returns required by this act.

**Sec. 45. Penalty for violation of this act.** Every person who shall violate any of the provisions of this act, for which no penalty or punishment is expressly prescribed, shall be fined not more than one thousand dollars.

## **Part II. Corporations organized under special charter.**

**Sec. 46. Location not to be changed.** No bank, savings bank, insurance company, or trust company shall change its location from one town to another except by an act of the general assembly.

**Sec. 47. Increase of capital stock.** Every specially chartered corporation having power by law to increase its capital stock may from time to time so increase it by issuing additional shares of the same par value, under such limitations as to the amount issued and of every other nature whatsoever as may exist either in its charter or in any statute affecting it; provided, that, at a meeting of its stockholders warned and held for that purpose, such increase shall have been authorized by a vote of at least two-thirds of each class of stock issued and outstanding at the time of said vote, which vote shall state the amount of the increase so authorized; or provided, that, at a meeting of its stockholders held for that purpose, a written or printed notice of which stating the day, hour, place, and purpose thereof shall have been given by the president or secretary to each stockholder by leaving such notice with him or at his residence or usual place of business or by mailing such notice to him at his last known post office address at least thirty days before such meeting, such increase shall have been authorized by a vote of at least two-thirds of each class of stock represented at such meeting. Before any such corporation shall issue any shares of such increased capital stock so voted, a majority of the directors shall make, sign, and swear to and file in the office of the secretary of the state a certificate setting forth the number of shares so voted and the par value thereof. The secretary shall examine the same, and, if he shall find that it conforms to law and that all taxes have been paid in accordance with the provisions of section 57, shall endorse thereon the word "Approved," with his name and official title, and shall thereupon record such certificate in a book kept by him for that purpose.

**Sec. 48. Stock preferred as to dividends.** Any specially chartered corporation, not engaged either in a trust, insurance, or banking business or in trading in bonds, notes, or other evidences of indebtedness, which has by law power to increase its capital stock, may so increase it by the issue of preferred stock, which shall be entitled to dividends of an agreed amount before any dividends are declared upon the stock already issued; and such dividends, if not paid in any one year, may be paid out of the earnings of subsequent years, if it be so provided in the vote authorizing such increase.

**Sec. 49. Stock preferred as to assets.** Any specially chartered corporation, having power under section 48 of this act to issue stock preferred as to dividends, may also issue stock preferred as to assets, the holders of which shall, in case of the winding up of the corporation, be paid up to the full par value of such preferred stock, out of the net assets available for distribution to stockholders, before the holders of other stock receive anything; and, if the holders of a majority of the common stock shall so vote, the holders of such preferred stock may be given the right to exchange such preferred stock for common stock, on such terms and conditions as may be determined by said vote; but the total capital stock of the corporation shall not be increased by such exchange.

**Sec. 50. Issue, how authorized.** No issue of preferred stock shall be made unless authorized at a meeting of the stockholders warned and held for that purpose, by a vote of stockholders holding not less than two-thirds of the stock of such corporation, which vote shall determine the amount of preferred stock so to be issued, the number and value of the shares thereof, the dividends to be paid thereon, whether the same shall be cumulative or not, and the terms of the preferment as to assets, if such preferment is made.

**Sec. 51. Certificate of increase of preferred stock.** No certificate for such preferred stock shall be issued until a majority of the directors have made, signed, and sworn to and filed in the office of the secretary of the state a certificate setting forth the increase of such capital stock, the number and value of such shares, the amount of the dividend to be paid thereon, whether the same is to be cumulative or not, and the terms of the preferment as to assets, if such preferment is made. The secretary shall thereupon record such certificate in a book kept by him for that purpose. The certificate required by this section shall be in addition to those required by law in relation to the increase of capital stock.

**Sec. 52. Reduction of capital stock.** Any specially chartered corporation may reduce its capital stock. No such reduction shall be valid unless approved by a vote of two-thirds of all outstanding stock of each class at a meeting of the stockholders warned and held for that purpose, nor unless a majority of the directors shall make, sign, and swear to and file in the office of the secretary of the state a certificate stating that the reduction has been duly approved by the stockholders and setting forth a copy of the vote of the stockholders, which vote shall show the details as to such reduction. The secretary shall record such certificate in a book kept by him for that purpose.

**Sec. 53. Change of name by superior court.** Any specially chartered corporation, having voted to change its corporate name, may apply to the superior court for the county in which it is located to have such change made, first giving notice of such intended application by advertisement for two weeks consecutively in a newspaper published in Hartford or New Haven and a newspaper, if there be one, published in the town in which the corporation is located; and said court may change said name as prayed for, and, upon filing for record in the office of the secretary of the state a certified copy of the order of the court, the name of such corporation shall be as decreed by said court; but no right existing at the time of such change in favor of or against such corporation shall be affected thereby. The secretary shall thereupon record such certified copy in a book kept by him for that purpose.

**Sec. 54. Charter without organization void after two years.** The charter of every specially chartered corporation, except as otherwise specially provided by law, shall be void, unless such corporation shall be organized and a certificate of such organization, sworn to by the president or secretary, or, if there be no such officers, by an officer, having custody of the records of such corporation, shall be filed in the office of the secretary of the state within two years from the date of the approval of such charter. The secretary shall thereupon record such certificate in a book kept by him for that purpose.

**Sec. 55. Acceptance and effect of charter amendment.** When any amendment or alteration of the charter of any specially chartered corporation shall be made, if it be not otherwise specially provided in the resolution making such alteration or amendment, it shall not become operative unless, within six months after its passage, it shall be accepted at a meeting of such corporation warned and held for that purpose, nor unless, within said period, an attested copy of said acceptance shall be filed in the office of the secretary of the state, to be recorded by him in a book kept for that purpose; and such acceptance shall make the original charter and all resolutions amending and altering the same subject to amendment, alteration, and repeal, at the pleasure of the general assembly. If such amendment shall be made before the acceptance of the original charter, then such amendment may be accepted at the same time such original charter is accepted.

**Sec. 56. Reports to general assembly.** Corporations required to make reports to the general assembly shall make them during the first week of each regular session.

**Sec. 57. Tax on stock issue authorized by special act; penalty.** Before any bill or resolution creating a corporation having a capital stock shall be approved or become a law, there shall be paid to the state treasurer, in addition to the fees required by section 10 of the general statutes, a franchise tax of one dollar on each one thousand dollars of the capital stock with which it is to be organized, but such tax shall in no case be less than fifty dollars. If such bill or resolution shall not be approved or become a law, the treasurer shall return the tax so paid. Whenever any specially chartered corporation shall vote to increase the amount of its capital stock in accordance with the provisions of this act or of any other general or special law affecting it, such corporation shall pay to the state treasurer, before any shares of such increased capital stock shall be issued, a further tax of one dollar on each one thousand dollars of the total increased capital stock so voted, but no additional franchise tax shall be required upon stock upon which the corporation has paid the full franchise tax required by the law in force at the time of such payment. Every officer of any corporation subject to any of the provisions of this section, who shall sign or issue any certificate of stock on which the tax imposed by this section has not been paid, shall be fined one thousand dollars, or imprisoned not more than two years, or both.

### Part III. The Corporation Act of 1901.

**Sec. 58. Application.** The provisions of this part shall apply to all corporations formed under it and to all corporations heretofore organized under the joint stock law of this state or the corporation act of 1901, but shall not require the reorganization of corporations heretofore formed.

**Sec. 59. Powers.** Every corporation to which this part applies, in addition to all other powers granted by law, shall have power to mortgage its real and personal estate, including its franchises, and issue promissory notes, bonds, or other evidences of indebtedness. Such corporation may also issue one or more classes of stock.

**Sec. 60. Certificates.** Every certificate required by this part to be filed shall be signed and sworn to by the persons required to file it, and shall be filed in the office of the secretary of the state, who shall examine the same, and, if he shall find that it conforms to law and that all taxes which may be due upon the filing of the certificate under the provisions of section 61 of this act have been paid, shall indorse thereon the word "Approved," with his name and official title, and shall thereupon record such certificate in a book kept by him for that purpose. No act required to be set forth in any such certificate shall be valid until such certificate has been approved as aforesaid, but this provision shall not relieve the corporation, its officers, directors, or stockholders from any liability which might otherwise be enforceable against them or any of them, or invalidate any of the stock of such corporation in the hands of bona fide holders without notice. No such corporation shall commence business until a copy of the certificate required by section 63 hereof, duly certified by the secretary of the state, shall have been filed in the office of the town clerk of the town where the said corporation is to be located; and said town clerk shall record the same in a book kept by him for that purpose.

**Sec. 61. Tax on capital stock.** Every such corporation, before its certificate of incorporation shall be approved by the secretary of the state, shall pay to the

state treasurer fifty cents on every one thousand dollars of its authorized capital stock up to five million dollars; and it shall pay ten cents upon every one thousand dollars of its authorized capital stock in excess of five million dollars. Whenever any corporation organized under the provisions of this part, or under any former joint stock law of this state, shall increase the amount of its authorized capital stock, it shall pay to the state treasurer, before the certificate of increase shall be approved, fifty cents on each one thousand dollars of such authorized increase until it has paid on a total capital stock of five million dollars; and, upon any authorized increase of capital stock above five million dollars, it shall pay to the state treasurer ten cents on each one thousand dollars; but no payment under the provisions of this section shall be less than twenty-five dollars. Said payments shall be in lieu of all other taxes upon the franchise of the corporation, but shall not be in lieu of any tax imposed by law upon the property of the corporation or upon the shares of its stock in the hands of its stockholders.

**Sec. 62. Formation.** Any three or more persons may associate to form a corporation under this act for the transaction of any lawful business. Such corporation shall not have power, however, to transact in this state the business of a bank, savings bank, trust company, building and loan association, insurance company, surety or indemnity company, railroad or street railway company, telegraph or telephone company, gas, electric light, or water company, or of any company requiring the right to take and condemn lands or to occupy the public highways of this state, but shall have power to transact such business in any state or territory of the United States, or in any foreign country, if not prohibited by the laws of such state or territory or foreign country.

**Sec. 63. Certificate of incorporation.** The persons so associated shall file a certificate setting forth: 1. The name of the corporation; 2. The name of the town in this state in which the corporation is to be located; 3. The nature of the business to be transacted or the purposes to be promoted or carried out; 4. The amount of authorized capital stock, which shall not be less than two thousand dollars, the number of shares into which the same is divided, and the par value of each share, which shall not be less than twenty-five dollars, and, if there be more than one class of stock, a description of the different classes with the terms on which they are respectively created; 5. The amount of capital stock with which the corporation shall commence business, which shall not be less than one thousand dollars; 6. The period, if any, limited for the duration of the corporation.

**Sec. 64. Certificate may contain additional provisions.** The certificate of incorporation may also contain any lawful provisions which the incorporators may choose to insert for the regulation of the business of the corporation or for defining and regulating the powers of the corporation, its officers, directors, and stockholders or any class of stockholders.

**Sec. 65. Evidence of corporate existence.** Upon the approval of the certificate of incorporation by the secretary of the state, corporate existence shall begin. A copy of such certificate and approval, duly certified by the secretary of the state under his hand and the seal of the state, shall be prima facie evidence of the legal existence of any such corporation.

**Sec. 66. Power of incorporators.** After the approval of the certificate of incorporation as aforesaid and until the directors are elected, the incorporators shall have charge of the affairs of the corporation, and may take such steps as are necessary or proper to obtain subscriptions to its stock.

**Sec. 67. Call of first meeting; waiver.** A majority of the incorporators shall call the first meeting of the corporation, at such time and place as they may designate, by a notice published twice, at least seven days before the time designated, in a newspaper in this state having a circulation in the town in which the corporation is located; but such notice may be waived by a writing signed by all the subscribers to the capital stock and a majority of the incorporators, specifying the time and place for said meeting, which waiver shall be recorded at length upon the records of the corporation.

**Sec. 68. Organization; adoption of by-laws.** At such meeting, including adjournments thereof, the subscribers for stock who are present in person or by attorney shall perfect an organization by the choice of a temporary clerk and the election by ballot of three or more directors who are subscribers for stock, and shall adopt by-laws for the regulation of the affairs of the corporation. Such subscribers

may also transact any other business; provided, that due notice thereof has been given in the call for such meeting or has been expressly waived.

**Sec. 68b. Filing of certificate.** [Added by Acts, 1909, c. 160.] Unless the certificate of organization required by section sixty-nine is filed within two years after the filing of the certificate of incorporation, such certificate of incorporation shall be void. The provisions of this section shall apply to all certificates of incorporation, filed prior to the going into effect hereof, under which organization shall not have been perfected, and for the purpose hereof certificates of organization thereunder may be filed at any time within two years after this section shall go into effect.

**Sec. 69. Commencement of business; certificate of organization.** No such corporation shall commence business until the amount of capital specified in its certificate of incorporation as the amount of capital with which it will commence business has been paid in; nor until its directors and officers have been duly elected and its by-laws adopted; nor until a majority of its directors have caused to be filed a certificate of organization setting forth: 1. The amount of each class of stock subscribed for; 2. The amount paid thereon in cash; 3. The amount paid thereon in property other than cash; 4. The amount paid on each share of stock which is not paid for in full; 5. The name, residence, and address of each of the original subscribers, with the number and class of shares subscribed for by each; 6. That the directors and officers of the corporation have been duly elected and its by-laws adopted; 7. The name, residence, and post office address of each of the officers and directors; 8. The location of its principal office in this state, with the street and number, if any there be, and the name of the agent or person in charge thereof upon whom process against the corporation may be served. A copy of such certificate, duly approved by the secretary of the state and certified under his hand and the seal of the state, shall be prima facie evidence that such corporation has been duly organized and is duly authorized to exercise all of its corporate powers.

**Sec. 70. Officers.** The directors of every corporation shall choose from among their number a president and shall appoint a treasurer, a secretary, and such other officers as the by-laws shall prescribe. The same person may fill the offices of president and treasurer or of secretary and treasurer.

**Sec. 71. Issue of additional stock.** Every corporation may, at any meeting warned and held for that purpose, empower its directors to issue shares of its unissued authorized capital stock. At the time for the filing of its next annual report after the issue of any such shares, a majority of the directors shall make and file a certificate setting forth the facts relating to such issue similar to the facts relating to the original issue of stock required by subdivisions 1. to 5., inclusive, of section 69 of this act.

**Sec. 72. Surrender of rights before beginning business.** At any time before the payment of any part of the subscriptions to capital stock and before the commencement of business, the incorporators, and the subscribers for stock, if any, may surrender the corporate rights and franchises of any corporation by filing a certificate that no part of such subscription has been paid, that such business has not been commenced, that no debts have been incurred which are unpaid, and that they surrender all rights and franchises of such corporation. When such certificate has been examined and approved by the secretary of the state, the existence of such corporation shall terminate.

**Sec. 73. Amendment of certificate of incorporation before commencing business.** At any time before the filing of the certificate of organization the incorporators of any corporation may make such amendments, changes, and alterations in its certificate of incorporation as may be desired; provided, that the subject-matter of such changes could have been lawfully inserted in an original certificate of incorporation. No change, alterations, or amendment shall be valid, unless approved in writing by all of the subscribers, if any, to the capital stock of such corporation, nor unless a certificate, setting forth such amendments, changes, or alterations and stating that the same has been duly approved by the subscribers, if any, shall be made and filed by all of the incorporators.

**Sec. 74. Changes in certificates of incorporation.** Every corporation may change its name, the nature of its business, and its location; may increase or reduce the amount of its authorized capital stock; may create one or more classes of stock; and may make such other amendments, changes, and alterations in its certificate



of incorporation as may be desired; provided, that the subject-matter of such changes, amendments, and alteration could have been lawfully inserted in an original certificate of incorporation. No such change, alteration, or amendment shall be valid unless approved by a vote of two-thirds of all of the outstanding stock of each class at a meeting of the stockholders duly called to consider such amendment, change, or alteration, nor unless a certificate, setting forth such amendments, changes, or alterations and stating that the same have been duly adopted by the stockholders, shall be made and filed by a majority of the directors.

**Sec. 75. Similar corporations may consolidate.** Any two or more corporations which are carrying on business of the same or a similar nature may merge or consolidate into a single corporation.

**Sec. 76. Directors' agreement as to terms of consolidation.** The directors of the several corporations proposing to merge or consolidate may enter into an agreement, signed by them and under the corporate seals of the respective corporations, prescribing the terms and conditions of such proposed consolidation and stating the name of the consolidated corporation, the number, names, and places of residence of its first directors, the number of shares of its capital stock and the classes thereof and the amount or par value of each share thereof, and the manner of converting the shares of capital stock of each of the old corporations into shares of the capital stock of the consolidated corporation, together with such other provisions as are required to be set forth in an original certificate of incorporation and any other provisions necessary to carry such proposed consolidation into effect.

**Sec. 77. Stockholders to vote upon consolidation.** Such agreement shall be submitted to the stockholders of each of such merging or consolidating corporations, separately, at a meeting thereof to be called for the purpose of considering the same, and twenty days' notice of the time, place, and object of such meeting shall be mailed to the last known post office address of each of such stockholders, and such notice shall be published once in each week for three successive weeks in one or more newspapers of this state having a circulation in the towns in which such corporations are respectively located. At such stockholders' meetings, if two-thirds of all the outstanding stock of each class shall vote to approve such merger or consolidation, the facts shall be certified upon such agreement by the secretaries of the respective corporations under the seals thereof, and such agreement so adopted and certified shall be filed in the office of the secretary of the state, who shall if the same conforms to the provisions of this chapter, indorse the same "Approved," with his name and official title; and a copy of such agreement, certificate, and approval, duly certified by the secretary of the state under his hand and the seal of the state, shall be prima facie evidence of the facts set forth in such agreement and certificate and of the legal existence and organization of such consolidated corporation and that it is duly authorized to exercise all of its corporate powers.

**Sec. 78. Rights, duties, and liabilities of consolidated corporations.** Upon the completion of such consolidation, the several corporations shall become a corporation by the name provided in such agreement, and shall possess all the rights, privileges, powers, and franchises of each of the consolidating corporations; and all property, real, personal, and mixed, and all debts due to them on whatever account, shall be vested in the consolidated corporation; and all rights of creditors and all liens upon the property of either of such consolidating corporations shall be preserved unimpaired, and the respective corporations shall continue in existence so far as may be necessary to preserve the same; and all debts, liabilities, and duties of either of such consolidated corporations shall thenceforth attach to the consolidated corporation, and may be enforced against it to the same extent as if they had been incurred or contracted by it. An amount of the stock of the consolidated corporation equivalent to the amount of the stock of the merged corporations on which a franchise tax has been paid shall be exempt from taxation under section 61 of this act.

**Sec. 79. Remedy of aggrieved stockholder.** Any stockholder in any corporation consolidating as aforesaid who, at the time of such consolidation, objected thereto in writing, may, within ten days after the agreement of consolidation has been filed for record in the office of the secretary of the state, demand in writing from the consolidated corporation payment for his stock; and such corporation shall, within three months thereafter, pay him the value of his stock at the date of such consolidation. In case of disagreement as to the value thereof, such value



shall be ascertained by three disinterested persons to be chosen, one by the stockholder, one by the directors of the consolidating corporation, and the third by the two thus selected, and, in case their award is not paid within sixty days from its date, it shall become a debt of such consolidated corporation and may be collected as such. On receiving payment of the amount awarded, such stockholder shall transfer this stock to the consolidated corporation, which shall dispose of it on the best terms obtainable.

#### Part IV. Foreign corporations.

**Sec. 80. Meaning of "foreign corporation."** Unless otherwise expressly provided, the term "foreign corporation" shall mean every corporation not organized under the laws of this state.

**Sec. 81. Powers and limitations.** Any foreign corporation may purchase, hold, mortgage, lease, sell, and convey real and personal estate in this state for its lawful uses and purposes, and such real estate and other property as it may acquire, by way of foreclosure or otherwise, in payment of debts due such corporation; but no foreign corporation belonging to any of the classes excepted in section 62 of this act shall engage in or continue, in this state, the business authorized by its charter or the laws of the state under which it was organized, unless empowered so to do by some general or special law of this state, except for the purpose of carrying out and renewing existing contracts heretofore made.

**Sec. 82. Charter or certificate of incorporation to be filed.** Every foreign corporation, except insurance and surety companies, building and loan associations, and investment companies within the provisions of section forty-one of this act, shall, before transacting business in this state, file in the office of the secretary of the state a certified copy of its charter or certificate of incorporation, together with a statement, signed and sworn to by its president, treasurer, and a majority of its directors, showing the amount of its authorized capital stock and the amount thereof which has been paid in, and, if any part of such payment has been made otherwise than in cash, such statement shall set forth the particulars thereof.

**Sec. 83. Secretary of the state to be resident attorney.** Every foreign corporation with an office or place of business in this state, except insurance companies, surety companies, and building and loan associations, shall, before doing business in this state, appoint in writing the secretary of the state and his successors in office to be its attorney, upon whom all process in any action or proceeding against it may be served; and in such writing such corporation shall agree that any process against it which is served on such secretary shall be of the same legal force and validity as if served on the corporation, and that such appointment shall continue in force as long as any liability remains outstanding against the corporation in this state. Such written appointment shall be acknowledged before some officer authorized to take acknowledgments of deeds and shall be filed in the office of said secretary, and copies certified by him shall be sufficient evidence of such appointment and agreement. Service upon said attorney shall be sufficient service upon the principal, and may be made by leaving a duly attested copy of the process with the secretary of the state or at his office.

**Sec. 84. Duty of secretary when served with process; fee; record.** When legal process against any corporation mentioned in section 83 of this act is served upon the secretary of the state, he shall immediately notify the corporation thereof by mail, and shall, within two days after such service, forward in the same manner a copy of the process served upon him to such corporation, or to any person designated by such corporation in writing. The plaintiff in the process so served shall pay said secretary at the time of such service a fee of twenty-five cents for each page of process, said fee in no case to be less than two dollars, which shall be recovered by him as part of his taxable costs if he shall prevail in the suit. Said secretary shall keep a record of all process served upon him, which shall show the day and hour when such service was made.

**Sec. 85. Failure to file certificates and appoint attorney; penalty.** Every officer of a foreign corporation transacting business in this state which fails to comply with the requirements of sections 82 and 83 of this act, and every person who transacts business in this state as the agent of such delinquent corporation, shall be fined not more than one thousand dollars; but such failure shall not affect the validity of any contract by or with such corporation. The secretary of the state shall report

such failure to the attorney-general, who shall thereupon institute proceedings against such corporation to restrain its further prosecution of business in this state.

**Sec. 86. Certificate of increase or reduction of capital to be filed.** Every foreign corporation doing business in this state shall, within thirty days after an increase or reduction of its capital stock, file in the office of the secretary of the state a certificate thereof, substantially like that required of domestic corporations organized under the corporation act of 1901 under like conditions.

**Sec. 87. Annual reports.** The president and treasurer of every foreign corporation doing business in this state, which is not required by law to make other annual returns in this state, shall, annually, on or before the fifteenth day of February or August, make, sign, and swear to and file in the office of the secretary of the state a certificate similar to the certificate required by section 37 of this act, except that such certificate need not give the name of the agent or person in charge of its principal office upon whom process against the corporation may be served. The secretary shall thereupon record such certificate in a book kept by him for that purpose and shall furnish a certified copy of such certificate to the persons filing the same, who shall forthwith cause such certified copy to be recorded in the office of the town clerk of the town in this state in which such corporation has its principal office or place of business, and said town clerk shall record the same in a book kept by him for that purpose. On the fifteenth day of March and September the town clerks of the several towns shall report to the secretary of the state the names of all corporations whose annual reports have been filed for record during the preceding six months, in accordance with the provisions of this section, and the secretary shall report to the attorney-general every six months the names of all corporations which have failed to comply with the provisions of this section and the attorney-general shall collect all forfeitures due under this section. Every corporation whose officers shall fail to comply with the requirements of this section shall forfeit to the state one hundred dollars for each failure.

**Sec. 88. What penalties apply to foreign corporations.** All penalties and liabilities which are imposed by the laws of this state upon officers, directors, and stockholders of domestic corporations for false and fraudulent statements and returns, shall apply to the officers, directors, and stockholders of foreign corporations doing business in this state.

## **Part V. Corporations without capital stock.**

**Sec. 89. Organization.** Any three or more persons may associate to form a corporation without capital stock, to promote or carry out any lawful purpose, other than that of a mercantile or manufacturing business, by signing and acknowledging before any officer authorized to take acknowledgments of deeds and filing in the office of the secretary of the state a certificate stating: 1. That they do so associate; 2. The purpose or object of the corporation; 3. The town in this state in which the corporation is to be located. The persons so associating may also include in said certificate any other lawful provisions for the regulation of the affairs of the corporation and the definition of its powers and the powers of its officers, directors, and incorporators. Such certificate shall be examined by the secretary of the state, and, if he shall find that it conforms to law and that the fee required by section 4814 of the general statutes to be paid at the filing of such certificate has been paid, he shall indorse thereon the word "Approved," with his name and official title, and shall thereupon cause the same to be recorded in his office. He shall then prepare a certified copy of such certificate and of his approval and deliver the same to one of the persons so associated, who shall forthwith cause such copy to be recorded in the office of the town clerk in the town where such corporation is to be located. When such certificate has been duly approved and recorded, the persons so associated, with such others as may be associated with them or become their successors in such manner as the by-laws of the corporation provide, shall be and become a body politic and corporate and shall have all the powers conferred upon corporations by section 3 of this act, and may receive property by devise or bequest and hold the same, so far as such property may be necessary or proper to enable such corporation to carry out its purposes. A copy of the certificate filed in the office of the secretary of the state and of his approval, duly certified under his hand and the seal of the state, shall be *prima facie* evidence of the facts therein set forth and of the legal existence of such corporation and of its authority

to exercise its corporate powers. Such corporation may at any time amend its original certificate of incorporation by a three-fourths vote of its incorporators, their associates, and successors, at a meeting of the corporation duly called to consider such amendment, and by causing a certificate, duly attested by its president and secretary and setting forth the fact that such vote has been passed and stating the subject-matter of such amendment, to be filed, approved, and recorded in the same manner as the original certificate of incorporation.

**Sec. 90. By-laws; assessments; fines.** Any corporation without capital stock may make by-laws imposing fines and penalties, and may lay assessments or dues to further the objects of the corporation, either by by-laws adopted for that purpose or by vote of the members of such corporation at meetings warned and held for that purpose. No such by-law shall be adopted and no such assessment or due shall be laid except by a two-thirds vote of all the members of the corporation. No such fine, assessment, or due shall exceed the sum of twenty-five dollars. Such corporation may sue for and collect such fines and assessments and dues.

**Sec. 91. Repeal.** Sections 3311 to 3398, inclusive, and 3928 to 3938, inclusive, of the general statutes and chapter 69 of the public acts of 1903 are hereby repealed.

## **Laws, 1909, c. 200. An Act concerning Annual Reports of Corporations.**

**Sec. 1. Failure to file annual report for two consecutive years deemed prima facie evidence of forfeiture of charter.** Every corporation required to file an annual report under the provisions of section thirty-seven of chapter 194 of the public acts of 1903 as amended by chapters 242 and 267 of the public acts of 1905 and chapter 27 of the public acts of 1907 which shall neglect to file such report for two consecutive years, and shall not pay to the state the forfeitures imposed for such neglect, shall prima facie be deemed to have forfeited its corporate rights and powers, and its corporate existence may be terminated in the manner hereinafter provided; but no property rights or rights of action in favor of or against such corporation, its officers or stockholders, and no rights and franchises which have lawfully passed from such corporation to any other corporation, person, or persons shall be affected or impaired by the provisions of this act; and said corporation shall continue in existence so far as may be necessary to enable it to prosecute and defend suits by or against it, close up its affairs, dispose of its property, and distribute its assets.

**Sec. 2. Notice of failure to be given corporation by the secretary of state. Forfeiture of charter.** Whenever the default of any such corporation to make annual reports and pay said forfeitures shall have continued for two consecutive years, the secretary of the state shall notify said corporation by registered mail that, under the provisions of this act, its corporate rights and powers are prima facie forfeited, and unless said corporation shall pay to the state the forfeitures incurred by its defaults, and, within three months from the mailing of said notice, file a report, as of the first day of January or July immediately preceding, made out and verified in all respects as the annual reports of corporations are required to be made out and verified, the secretary of the state shall record, in the records of corporations in his office, a certificate, by him signed, that the corporate rights and powers of the delinquent corporation have been forfeited by reason of its defaults, and its corporate existence shall thereupon cease and terminate except as provided in section one and except as hereinafter provided; and the secretary of the state shall immediately send to the delinquent corporation, by registered mail, a certified copy of said certificate of forfeiture.

**Sec. 3. Reinstatement.** At any time within six months after the mailing of such certificate of forfeiture of corporate rights and powers, the secretary of the state may revoke said certificate of forfeiture and reinstate said corporation in the records of his office upon the payment to the state of all penalties and forfeitures incurred by such defaults and of a reinstatement fee of twenty-five dollars, and upon the filing in his office of the report provided for in the preceding section as of the first day of January or July immediately preceding; and thereupon said corporation shall be revested with and be empowered to exercise all its corporate rights and powers.

**Sec. 4. Application of act.** The provisions of this act shall not be held to apply to any cemetery association, or to any historical, library, literary, scientific, school, or social society, association, or company.

## **Laws, 1907, c. 165. An Act concerning the Dissolution of Corporations without Capital Stock.**

**Sec. 1. Voluntary dissolution of corporation.** Whenever the board of management of any corporation without capital stock, corresponding in its official relation to such corporation with the board of directors of a corporation having capital stock, shall vote to terminate its corporate existence, said board of management shall forthwith call a special meeting of the members of such corporation, to be held not less than thirty nor more than forty days from the date of such call. The call for said meeting shall contain a copy of said vote, and shall be published once a week for four weeks next preceding such meeting in a newspaper published in this state and having a circulation in the town in which such corporation is located, and a copy of said call shall be sent by mail to the last known address of each member of the corporation. If, at such meeting of the corporation, three-fourths in number of the members of said corporation present and voting at such meeting shall vote to confirm said vote of the board of management, said board of management shall proceed forthwith to wind up the affairs of the corporation; provided, that, if every member shall sign and acknowledge, before an officer authorized to take acknowledgments of deeds, an agreement among the members that the corporate existence of such corporation shall be terminated, such vote of the board of management and confirming vote of the members may be dispensed with.

**Sec. 2. Board of management trustee to wind up.** The board of management of any such corporation, the existence of which is to be terminated pursuant to the vote or agreement of its members as hereinbefore provided, shall be trustees to close up the business of said corporation. They shall forthwith prepare an inventory of its assets, make a list of its creditors, with the amounts due to each, and collect its bills and accounts receivable. They shall, within two weeks after the date of the members' vote of confirmation or agreement to dissolve the corporation, send a written notice of the proposed dissolution to every known creditor of such corporation warning him to present his claim, and stating to whom and at what place such claim may be presented, and shall, in such notice, limit the time, not less than four months after the date of such notice, within which such claim shall be presented; they shall also publish, in some newspaper published in this state and having a circulation in the town in which such corporation is located, a copy of such notice. Within one year from the date of said members' vote or agreement said trustees shall sell all of the property of such corporation, except money and uncollected accounts in litigation, at private sale or public auction, and, as soon as practicable, said trustees shall pay, in full or pro rata, all claims against such corporation which have been allowed by them or which may be found to be due by any proper tribunal, and shall distribute the balance of the assets, if any, pro rata among the members of said corporation.

**Sec. 3. Application to superior court.** Said trustees may, in their discretion, bring their application to the superior court for the county within which the corporation is located, or to any judge of the superior court if such court is not in session, setting forth the facts of such proposed dissolution, and praying the court, or such judge, to limit a period within which all claims against such corporation shall be presented, and such court or judge may make an order limiting the time within which claims shall be presented, which time shall not be less than four months from the date of such order; and such trustees shall proceed to wind up the affairs of the corporation, in accordance with the provisions of section two of this act, under the direction of the court, in the same manner as if they were receivers of said corporation. The court may, for cause shown, extend the period within which the trustees shall sell the property of the corporation.

**Sec. 4. When claims shall be barred.** All claims not presented within the time limited in accordance with the provisions of sections two and three of this act

shall be barred, and any claim so presented and disallowed by such trustees shall be barred unless the owner thereof shall commence an action to enforce the same within four months after such trustees shall have given him written notice of its rejection.

**Sec. 5. Creditors not to interfere with control of property.** No creditor shall, by attachment or by any process or proceeding, interfere with the custody, control or disposition of the property of such corporation by its board of managers acting as trustees for the winding up of its corporate affairs under the provisions of this act, but any creditor, pending such winding up, may apply to the superior court in the county in which the corporation is located, or to a judge thereof if such court is not in session, for the appointment of a receiver of such property on the ground of fraud, mismanagement, or incompetency of such trustees, and such court or judge, upon finding that such trustees are incompetent, or have been guilty of fraud or mismanagement in the discharge of their duties, shall appoint such receiver, and the powers of such trustees shall thereupon terminate. Nothing herein contained shall, however, prevent any person from establishing any claim against such corporation by an action at law, or prevent the foreclosure of any lien or mortgage existing at the time of such vote or agreement to dissolve.

**Sec. 6. Certificates concerning dissolution.** Whenever the members of any such corporation shall, by vote or written assent, agree to the dissolution of such corporation, a majority of its said board of management shall make, sign, and make oath to, and file in the office of the secretary of the state, a certificate that such vote has been duly passed or such assent duly given, and stating the address to which all claims against such corporation may be sent; and said secretary shall thereupon record such certificate in a book kept by him for that purpose. When said board of management has completed its duties as such trustees, a majority thereof shall make, sign, and make oath to and file in the office of the secretary of the state, a further certificate stating that said board of management has completed its duties in winding up the affairs of said corporation, and has sold or collected all of its assets and distributed the same, stating the manner of such distribution. The secretary shall examine the same, and, if he finds that it conforms to, law, shall indorse thereon the word "Approved," with his name and official title, and shall thereupon record such certificate in a book kept by him for that purpose; and when such certificate has been so approved by the secretary the existence of the corporation shall terminate.

**Sec. 7. Corporate existence to be continued for certain purposes.** The existence of any such corporation shall continue during the proceedings for the winding up of its affairs so far as may be necessary to enable it to prosecute and defend suits by or against it, close up its affairs, dispose of its property, and distribute its assets.

---

## **Laws, 1903, c. 196. An Act concerning the Sale of Shares of Stock in Mining and Oil Corporations.**

**Sec. 1. Restriction on sales of stock.** No shares or certificates of stock in any mining or oil corporation established under the laws of this or any other state shall be sold or offered for sale in this state by such corporation, or by any person or firm acting as agent or broker for such corporation, until such corporation has filed in the office of the secretary of the state a statement or certificate showing the financial condition of such corporation, the location of the mine or mines or oil properties owned by such corporation, with plans of the same, the amount of work done thereon, the amount of cash expended for improvements thereon, the condition of the plant and machinery connected therewith. Such statement or certificate shall be subscribed by the president, treasurer, and secretary of said corporation, and said president, treasurer, and secretary shall make oath to the same before some magistrate qualified to administer such oath. For the filing of such statement or certificate, a fee of twenty-five dollars shall be paid to the secretary of the state.

**Sec. 2. Penalties.** Any corporation or agent thereof or broker selling or offering for sale shares or certificates of stock in any mining or oil corporation which has not filed a statement or certificate in accordance with the provisions of section

one of this act, shall be punished by a fine not exceeding one hundred dollars for each offense.

**Sec. 3. Duty of secretary of state.** The secretary of the state shall report to the attorney-general, at least once in three months, the names of all agents, corporations, or brokers who, to his knowledge, are engaged in the sale of shares of stock in mining or oil corporations which have failed to comply with the provisions of this act, and the attorney-general shall thereupon cause prosecutions to be instituted by the proper authorities for all violations of the provisions of this act.

**Sec. 4. Application of act.** This act shall not apply to or in any way affect any corporation all of whose mines are situated within this state.

---

## Delaware. Constitution.

---

### Art. IX. Corporations.

**Sec. 1.** No corporation shall hereafter be created, amended, renewed or revised by special act, but only by or under general law, nor shall any existing corporate charter be amended, renewed or revived by special act, but only by or under general law; but the foregoing provisions shall not apply to municipal corporations, banks or corporations for charitable, penal, reformatory, or educational purposes, sustained in whole or in part by the state. The general assembly shall, by general law, provide for the revocation or forfeiture of the charters of all corporations for the abuse, misuse, or non-use of their corporate powers, privileges or franchises. Any proceeding for such revocation of forfeiture shall be taken by the attorney-general, as may be provided by law. No general incorporation law, nor any special act of incorporation, shall be enacted without the concurrence of two-thirds of all the members elected to each house of the general assembly.

**Sec. 2.** No corporation in existence at the adoption of this constitution shall have its charter amended or renewed without first filing, under the corporate seal of said corporation, and duly attested in the office of the secretary of state, an acceptance of the provisions of this constitution.

**Sec. 3.** No corporation shall issue stock, except for money paid, labor done or personal property, or real estate or leases thereof actually acquired by such corporation.

**Sec. 4.** The rights, privileges, immunities and estates of religious societies and corporate bodies, except as herein otherwise provided, shall remain as if the constitution of this state had not been altered.

**Sec. 5.** No foreign corporation shall do any business in this state through or by branch offices, agents or representatives located in this state, without having an authorized agent or agents in the state upon whom legal process may be served.

**Sec. 6.** Shares of the capital stock of corporations created under the laws of this state, when owned by persons or corporations without this state, shall not be subject to taxation by any law now existing or hereafter to be made.

---

## Laws, 1903, c. 394. An Act providing a General Corporation Law.<sup>1)</sup>

---

**Sec. 1. Number of persons required, purposes.** Any number of persons, not less than three, may associate to establish a corporation for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose under the provisions of and subject to the requirements of this act as hereinafter provided; excepting for such purposes as are excluded from the operation of a general law by section 1 of article 9, of the constitution of this state, upon making and filing a certificate of incorporation in writing in manner hereinafter mentioned. Corporations for constructing, maintaining and operating railroads, railways, telegraph or telephone lines outside of this state may be formed under the general provisions

---

<sup>1)</sup> As amended by Laws, 1905, c. 155; 1907, c. 174; 1909, cc. 154, 155, 156, 157, 158, 159.

of this act, but corporations for constructing, maintaining and operating railroads or railways within this state shall be subject to the special provisions and requirements of this act applicable to such corporations.

**Sec. 2. Powers.** Every corporation created under the provisions of this act shall have power: 1. To have succession, by its corporate name, for the time stated in its certificate of incorporation, and when no period is limited, it shall be perpetual; 2. To sue and be sued, complain and defend in any court of law or equity; 3. To make and use a common seal and alter the same at pleasure; 4. To hold, purchase and convey real and personal estate, and to mortgage any such real and personal estate with its franchises; the power to hold real and personal estate, except in the case of religious corporations, shall include the power to take the same by devise or bequest; 5. To appoint such officers and agents as the business of the corporation shall require, and to allow them suitable compensation; 6. To make by-laws not inconsistent with the constitution or laws of the United States or of this state, fixing and altering the number of its directors for the management of its property, the regulation and government of its affairs, and for the certification and transfer of its stock, with penalties for the breach thereof not exceeding twenty dollars; 7. To wind up and dissolve itself, or to be wound up and dissolved in the manner hereinafter mentioned; 8. To conduct business in this state, other states, the District of Columbia, the territories and colonies of the United States and in foreign countries, and have one or more offices out of this state, and to hold, purchase, mortgage and convey real and personal property out of this state, provided such powers are included within the objects set forth in its certificate of incorporation.

**Sec. 3. Additional powers.** In addition to the powers enumerated in the second section of this act, every corporation, its officers, directors and stockholders, shall possess and exercise all the powers and privileges contained in this act, and the powers expressly given in its charter or in its certificate under which it was incorporated, so far as the same are necessary or convenient to the attainment of the objects set forth in such charter or certificate of incorporation; and shall be governed by the provisions and be subject to the restrictions and liabilities in this act contained, so far as the same are appropriate to and not inconsistent with such charter or act under which such corporation was formed; and no corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the powers so given.

**Sec. 4. Banking powers denied.** No corporation created under the provisions of this act shall, by any implication or construction, be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, of receiving deposits of money, of buying gold and silver bullion, or foreign coins, or buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt for circulation as money.

**Sec. 5. What certificate shall set forth.** The certificate of incorporation shall set forth: 1. The name of the corporation, which name shall contain one of the words "association," "company," "corporation," "club," "incorporated," "society," "union" or "syndicate" and shall be such as to distinguish it from any other corporation engaged in the same business, or promoting or carrying on the same objects or purposes in this state; 2. The name of the city or town, county or place within the county in which its principal office or place of business is to be located, in this state and the name of its resident agent; 3. The nature of the business, or objects or purposes proposed to be transacted, promoted or carried on; 4. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars, the number of shares into which the same is divided and the par value of each share; the amount of capital stock with which it will commence business which shall not be less than one thousand dollars; and if there be more than one class of stock created by the certificate of incorporation, a description of the different classes with the terms on which the respective classes of stock are created. Provided, however, that the provisions of this paragraph shall not apply to corporations not for profit, for which it is desired to have no capital stock; in case any such corporation desires to have no capital stock it shall be so stated, and the conditions of membership shall be also stated; 5. The names and places of residence of each of the original subscribers to the capital stock, or if there be no stock, of the original corporators; 6. Whether or not the corporation is to have perpetual existence, if not the time when its existence is to commence and the

time when its existence is to cease; 7. Whether the private property of the stockholders shall be subject to the payment of corporate debts, and if so, to what extent; 8. The certificate of incorporation may also contain any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any classes of the stockholders; provided, such provisions are not contrary to the laws of this state.

**Sec. 6. Certificate, how signed, sealed and acknowledged.** The certificate shall be signed and sealed by each of the original subscribers to the capital stock, or if there be no capital stock, by each of the original corporators, and shall be acknowledged before any officer authorized by the laws of this state to take acknowledgments of deeds, to be the act and deed of the signers, respectively, and that the facts therein stated are truly set forth; said certificate shall be filed in the office of the secretary of state, who shall furnish a certified copy of the same under his hand and seal of office, and said certified copy shall be recorded in the office of the recorder of deeds of the county where the principal office of said corporation is to be located in this state, in a book to be kept for that purpose; said certificate or a copy thereof duly certified by the secretary of state, accompanied with the certificate of the recorder of the county wherein the same is recorded under his hand and the seal of his office stating that it has been recorded, the record of the same in the office of the recorder aforesaid, or a copy of said record duly certified by the recorder aforesaid, shall be evidence in all courts of law and equity in this state.

**Sec. 7. Beginning of corporate existence.** Upon making the certificate of incorporation and causing the same to be filed and a certified copy thereof recorded as aforesaid, and paying the license tax therefor to the secretary of state, the persons so associating, their successors and assigns, shall from the date of such filing, be and constitute a body corporate, by the name set forth in said certificate, subject to dissolution as in this act elsewhere provided.

**Sec. 8. Temporary management by corporators.** Until the directors are elected, the signers of the certificate of incorporation, shall have the direction of the affairs and of the organization of the corporation and may take such steps as are proper to obtain the necessary subscriptions to stock and to perfect the organization of the corporation.

**Sec. 9. Board of directors and how constituted.** The business of every corporation organized under the provisions of this act, shall be managed by a board of not less than three directors, except as hereinafter provided; each of whom shall own in his own right not less than three shares of capital stock; they shall hold office until their successors are respectively elected and qualified, and a majority of them shall constitute a quorum for the transaction of business, and at least one of them shall be a resident of this state. The board of directors may, by resolution passed by a majority of the whole board, designate two or more of their number to constitute an executive committee, who, to the extent provided in said resolution or in the by-laws of said company, shall have and exercise the powers of the board of directors in the management of the business and affairs of the company, and may have power to authorize the seal of the company to be affixed to all papers which may require it. The directors of any corporation organized as aforesaid, may, if so stated in the certificate of incorporation or in any amendment thereto, or may by a vote of the stockholders, be divided into one, two, or three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; of the third class two years thereafter, and at each annual election held after such classification and election, directors shall be chosen for the full term, as the case may be, to succeed those whose terms expire.

**Sec. 10. Officers; election; duties.** Every corporation organized under this act, shall have a president, secretary, and treasurer, who shall be chosen by the directors or stockholders, as the by-laws may direct, and shall hold their offices until their successors are chosen and qualified; the president shall be chosen from among the directors; the secretary shall be sworn to the faithful discharge of his duty, and shall record all the proceedings of the meetings of the corporation and directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him; the treasurer may be required to give bond in such sum, and



with such surety or sureties as shall be provided by the by-laws, for the faithful discharge of his duty.

The secretary and treasurer may or may not be the same person, and if the corporation have a vice-president, he may, if deemed advisable by the directors, hold the offices of vice-president and treasurer, or vice-president and secretary, but not the offices of vice-president, secretary, and treasurer.

The corporation may have such other officers, agents and factors as may be deemed necessary, who shall be chosen in such manner and hold their offices for such terms as may be prescribed by the by-laws, or determined by the board of directors, and may secure the fidelity of any or all of such officers by bond or otherwise; and may also provide by the by-laws for the qualification of any or all of such officers before any person authorized by law to administer an oath.

A failure to elect annually a president, secretary, treasurer, or other officers shall not dissolve a corporation.

Any vacancy occurring in the office of president, secretary, or treasurer, by death, resignation, removal, or otherwise, shall be filled in the manner provided for in the by-laws; in the absence of such provision, such vacancy shall be filled by the board of directors.

**Sec. 11. First meeting.** The first meeting of every corporation shall be called by a notice signed by a majority of the incorporators named in the certificate of incorporation, designating the time, place and purpose of the meeting; and such notice shall, at least two weeks before the time of any such meeting, be published three times in some newspaper of the county where the corporation may be established, or have its principal place of business; or said first meeting may be called without such publication of notice if two days' notice be personally served on all the parties named in the certificate of incorporation, or if all the parties named in the certificate of incorporation shall, in writing, waive notice and fix a time and place of meeting, then no notice of publication whatever shall be required of such first meeting.

**Sec. 12. By-laws, how made.** The power to make and alter by-laws shall be in the stockholders, but any corporation may, in the certificate of incorporation, confer that power upon the directors. By-laws made by the directors under power so conferred may be altered or repealed by the directors or stockholders.

**Sec. 13. Class of stock.** Every corporation shall have power to create two or more kinds of stock of such classes, with such designations, preferences and voting powers, or restriction or qualification thereof, as shall be stated and expressed in the certificate of incorporation; and the power to increase or decrease the stock, as in this act elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital paid in cash or property; and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price, to be expressed in the certificate thereof; and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon a fixed yearly dividend, to be expressed in the certificate, not exceeding eight per centum payable quarterly, half yearly or yearly, before any dividend shall be set apart or paid on the common stock, and such dividends may be made cumulative; and in no event shall a holder of preferred stock be personally liable for the debts of the corporation; but in case of insolvency its debts or other liabilities shall be paid in preference to the preferred stock. Unless its original or amended charter or certificate of incorporation shall so provide, no corporation shall create preferred stock. The terms "general stock" and "common stock" are synonymous.

**Sec. 14. Stock for labor, property, etc.** Subscriptions to, or purchase of, the capital stock of any corporation organized or to be organized under any law of this state may be paid for, wholly or partly, by cash, by labor done, by personal property, or by real property or leases thereof; and the stock so issued shall be declared and taken to be full paid stock and not liable to any further call, nor shall the holder thereof be liable for any further payments under the provisions of this act. And in the absence of actual fraud in the transaction, the judgment of the directors, as to the value of such labor, property, real estate or leases, shall be conclusive.

**Sec. 15. Stockholder's certificate, how signed.** Every stockholder shall have a certificate under the seal of the corporation signed by the president and treasurer, certifying the number of shares owned by him in such corporation.

**Sec. 16. Stock personal property; transfer; taxation.** The shares of stock in every corporation shall be deemed personal property and transferable on the books of the corporation in such manner and under such regulations as the by-laws provide: provided, however, that no stock or bonds issued by any corporation organized under this act shall be taxed by this state when the same shall be owned by non-residents of this state, or by foreign corporations. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.

**Sec. 17. Voting of stockholders.** Unless otherwise provided in the charter, certificate or by-laws of the corporation, each stockholder, whether resident or non-resident, shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock held by him, but no proxy shall be voted on after three years from its date; nor shall any share of the stock be voted on at any election which has been transferred on the books of the corporation within twenty days next preceding such election.

**Sec. 18. Voting power of fiduciary stockholders.** Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held, and persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy may represent said stock and vote thereon.

**Sec. 19. Power to purchase own stock.** Every corporation organized under this act shall have the power to purchase, hold, sell and transfer shares of its own capital stock: Provided that no such corporation shall use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of the capital of the corporation; and provided further that shares of its own capital stock belonging to the corporation shall not be voted upon directly or indirectly.

**Sec. 20. Liability of stockholders.** When the whole capital stock of a corporation shall not have been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of the par value of such share as fixed by the charter of the company or its certificate of incorporation, or such proportion of that sum as shall be required to satisfy the debt of the company, which said sum or proportion thereof may be recovered as provided for in section 49 of this act as amended, after a writ of execution against the corporation has been returned unsatisfied, as provided for in section 51 of this act as amended.

**Sec. 21. Directors may open books for subscription to corporate stock.** When any corporation is authorized to commence business, the directors may, if its whole capital stock has not been subscribed, open books for additional subscriptions to its capital stock.

The capital stock of a corporation shall be paid in such amounts and at such times as the directors may require; and the directors may, from time to time, assess upon each share of stock not fully paid up, such sum of money as the necessities of the business may, in the judgment of the board of directors, require, not exceeding in the whole the balance remaining unpaid on said stock, up to the par value thereof, and such sum so assessed shall be paid to the treasurer at such times and by such installments or calls as the directors shall direct, the said directors having given at least thirty days' notice of the time and place of such payments in a newspaper of the county in this state where such corporation is established, or has its principal place of business, or by written notice mailed at least thirty days before the time for such payment, to each stockholder at his last known post office address.

**Sec. 22. Failure to pay for stock.** When any stockholder fails to pay any installment or call upon his stock which may have been properly assessed thereon by the directors, at the time when such payment is due, the directors may collect the amount of such installments or call any balance thereof remaining unpaid, from the said stockholder by an action at law, or they shall sell at public sale such part of the shares of such delinquent stockholders as will pay all assessments then due from him with interest and all incidental expenses, and shall transfer the shares so sold to the purchaser, who shall be entitled to a certificate therefor. Notice of the time and place of such sale and of the sum due on each share shall be given by advertisement for three weeks successively; once in each week before the sale,

in a newspaper of the county in this state where such corporation is established, or has its principal place of business, and such notice shall be mailed by the treasurer of the corporation to such delinquent stockholder at his last known post office address, at least twenty days before such sale. If no bidder can be had to pay the amount due on the stock, and if the amount is not collected by an action at law, brought within the county where such corporation is established or has its principal place of business, within one year from the date of the bringing such action the said stock shall be forfeited to the corporation and the amount previously paid in by the delinquent on the stock shall be forfeited to the corporation.

**Sec. 23. Certificate of payment of stock.** The president with the secretary or treasurer of every corporation organized under this act shall upon the written request of any creditor or stockholder of such corporation make a certificate stating the amount of the installments or calls paid in cash or by the purchase of property, stating also the total amount of capital stock issued, which certificate shall be signed and sworn or affirmed to by the president and secretary or treasurer and they shall within thirty days after the making of such certificate or certificates cause the certificate to be filed in the office of the secretary of state.

**Sec. 24. Neglect or refusal of officers to file certificate.** If any of the said officers shall neglect or refuse to perform the duties required of them in the preceding section for thirty days after written request so to do by a creditor or stockholder of the corporation, they shall be jointly and severally liable for all its debts contracted after the making of such payments as provided for in the preceding section and before the filing of such certificate.

**Sec. 25. Amending certificate before payment of capital stock.** It shall be lawful for the incorporators of any corporation, before the payment of any part of its capital, to file with the secretary of state, an amended certificate, duly signed by the incorporators named in the original certificate of incorporation, and duly acknowledged in the manner in this act required for certificates of incorporation, in this act heretofore provided for, modifying, changing or altering its original certificate of incorporation in whole or in part; and said secretary of state shall furnish a certified copy of said certificate under his hand and seal of office, and said certified copy shall be recorded in the office of the recorder of the county in which its original certificate of incorporation was recorded; said amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been filed and recorded on the date of the filing and recording of the original certificate; provided, however, that nothing herein contained shall permit the insertion of any matter not in conformity with the provisions of this act.

**Sec. 26. Amendment of charters with capital stock.** Any corporation of this state existing prior to the passage of this amendatory act, whether created by special act, or general law, or any corporation created under the provisions of this act, may, from time to time, when and as desired, amend its charter of incorporation, either by addition to its corporate powers and purposes, or diminution thereof; or by substitution of other powers and purposes, in whole or in part, for those prescribed by its charter; or by increasing or decreasing its authorized capital stock; or by changing the number and par value of the shares of its capital stock, or by changing its corporate title; or by making any other change or alteration in its charter of incorporation that may be desired; provided that such amendment, change or alteration shall contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment.

Every such amendment shall be made and effected in manner following, to wit:

1. If the corporation has a capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and calling a meeting of the stockholders for consideration thereof. Said meeting shall be called and held upon such notice as the corporation's charter or by-laws provide, and in the absence of such provision, upon notice thereof, either delivered to the stockholder or mailed to the stockholder's post office address, if known, at least ten days before the date fixed for said meeting. At said meeting, a vote of the stockholders by ballot, in person or by proxy, shall be taken for and against the proposed amendment, which vote shall be conducted by two judges appointed for that purpose either by the directors or by the said meeting. Said judges shall decide upon the qualification of voters, and when the vote is completed, count and ascertain the

number of shares voted respectively for and against said amendment, and declare whether the persons or bodies corporate holding the majority of the stock of said corporation (or of each class of stock, if there be more than one) have voted for or against the proposed amendment; and shall make out certificates accordingly in duplicate, stating the number of shares of stock voted for and against the amendment respectively, and subscribe and deliver the same to the secretary of the corporation. If it shall appear by said certificates of the judges that the persons or bodies corporate holding the majority of the stock of said corporation (or of each class of stock, if there be more than one) have voted in favor of the amendment, thereupon, the said corporation shall make, under its corporate seal, and the hands of its president and secretary, a certificate accordingly, and the president shall duly execute the same before an officer authorized by the laws of this state to take acknowledgments of deeds; and the said certificate, so executed and acknowledged with one of the said judges' duplicate certificates attached, shall be filed in the office of the secretary of state, and a copy thereof certified by said secretary of state shall be recorded in the office of the recorder of the county in which the original charter of incorporation is recorded; or if the corporation shall have been created by special public act of the legislature, then said certificate shall be recorded in the office of the recorder of any county where the business of the said corporation may be conducted. And upon so filing and recording the same, the charter of said corporation shall be deemed to be amended accordingly. Provided, however, that no corporation shall decrease its authorized capital stock without paying or adequately securing such of its debts as are not then fully secured; 2. If the corporation has no capital stock, then the board of directors, managers, trustees, or the governing body thereof, shall pass a resolution declaring that such amendment, addition, change or alteration is advisable, and if at the next meeting, held not earlier than fifteen days and not later than thirty days from the meeting at which such resolution shall have been passed, two-thirds of the whole number of the said board of directors, managers, trustees, or the governing body, shall vote in favor of such amendment, addition, change or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged by said president and secretary before any officer authorized by the laws of this state to take acknowledgments of deeds, to be the act and deed and certificate of such corporation, and such certificate acknowledged as aforesaid, together with the assent of two-thirds of the whole number of the members of the said board of directors, managers, trustees, or governing body in writing, shall be filed in the office of the secretary of state, and a copy thereof duly certified by the secretary of state shall be recorded in the office of the recorder of the county in which the original charter of incorporation is recorded; or, if the corporation shall have been created by a special public act of the legislature, then said certificate shall be recorded, as above provided, in the county where said corporation has its principal place of business; and upon so filing and recording the same, the charter of incorporation shall be deemed to be amended accordingly.

**See. 27. Increase of capital stock.** Every corporation organized under the provisions of this act, may, at any meeting, increase its capital stock and the number of shares therein, until it shall reach the amount named in the original certificate.

**See. 28. Reduction of capital stock.** Any corporation organized under this act, may reduce its capital stock at any time by a vote of, or by the written consent of stockholders representing two-thirds of its capital stock, and after notice of the proposed decrease has been mailed to the address of each stockholder at least twenty days before the meeting is held for that purpose; and a statement of the reduction shall be signed and acknowledged by the president and a majority of the directors, and shall be filed and a certified copy thereof recorded in the same manner as certificates of incorporation are required to be. No such reduction, however, shall be made in the stock of any corporation until all its debts which are not otherwise fully secured shall have been paid and discharged.

The decrease of capital stock issued may be effected by retiring or reducing any class of the stock, or by drawing the necessary number of shares by lot for retirement, or by the surrender of every shareholder of his shares, and the issue to him in lieu thereof of a decreased number of shares or by the purchase at not above par of certain shares for retirement, or by retiring shares owned by the corporation or by reducing the par value of shares; and when any corporation shall

decrease the amount of its capital stock hereinbefore provided, the certificate decreasing the same, shall be published for three weeks successively at least once in each week, in a newspaper published in the county in which the principal office of the corporation is located; the first publication to be made within fifteen days after the filing of such certificate, and in default thereof the directors of the corporation shall be jointly and severally liable for all the debts of the corporation contracted before the filing of the said certificate, and the stockholders shall also be liable for such sums as they may respectively receive of the amount so reduced; provided, no such decrease of capital stock shall release the liability of any stockholder whose shares have not been fully paid, for debts of the corporation theretofore contracted.

**Sec. 29. Voting list of stockholders.** After the first election of directors no stock shall be voted on at any election which shall have been transferred on the books of the company within twenty days next preceeding such election, and it shall be the duty of the officer who shall have charge of the stock ledger to prepare and make, at least ten days before every election, a complete list of stockholders entitled to vote, arranged in alphabetical order. Such list shall be open at the place where said election is to be held for said ten days, to the examination of any stockholder, and shall be produced and kept at the time and place of election during the whole time thereof, and subject to the inspection of any stockholder who may be present. Upon the neglect or refusal of the said directors to produce such list at any election they shall be ineligible to any office at such election. The original or duplicate stock ledger shall be the only evidence as to who are the stockholders entitled to examine such list or the books of the company, or to vote in person or by proxy, at such election. The original or duplicate stock ledger containing the names and addresses of the stockholders, and the number of shares held by them, respectively, shall, at all times, during the usual hours for business, be open to the examination of every stockholder at its principal office or place of business in this state, and said original or duplicate stock ledger shall be evidence in all courts of this state.

Every corporation, now or hereafter organized under and pursuant to the provisions of this act may make suitable provision in its certificate of incorporation, original or amended, and thereby to the extent, in the manner and subject to the conditions provided in the certificate of incorporation confer upon the holders of any bond or debentures issued or to be issued by any such corporation, whether secured by mortgage or otherwise, the power to vote in respect to the corporate affairs and management of the company to the same extent and in the same manner as stockholders of the said corporation, as may be provided in the certificate of incorporation and, in case of a default in the payment of the principal or interest on said bonds or otherwise, or in any other case, confer upon such bondholders the same right of inspection of the corporate books and accounts and records of any such company, and also any other rights, which the stockholders of the said company have or may have by reason of the provisions of the statutes of this state or pursuant to the provisions of the certificate of incorporation.

**Sec. 30. Election of directors and filling of vacancies.** All elections of directors shall be by ballot, unless otherwise provided in the charter or the certificate of incorporation. The first meeting for the election of directors, at which meeting any business may be transacted, shall be held at any place either within or without this state fixed by a majority of the incorporators in a writing signed by them and thereafter the said directors shall be elected at the time and place within or without this state named in the by-laws, and which shall not be changed within sixty days next before the day on which the election is to be held. A notice of any change shall be given to each stockholder twenty days before the election is held, in person or by letter mailed to his last known post office address.

Any vacancy in the board of directors shall be filled by the board, unless otherwise provided in the by-laws, and the directors so appointed shall hold office until the next annual election and until their successors shall be duly elected and qualified.

**Sec. 31. Failure to elect directors.** If the election for directors of any corporation shall not be held on the day designated by the by-laws, the directors shall cause the election to be held as soon thereafter as conveniently may be; no failure to elect directors at the designated time shall work any forfeiture or dissolution of the corporation, but the chancellor may summarily order an election to be held

upon the application of any stockholder, and may punish the directors for contempt of court for failure to obey the order.

**Sec. 32. Meetings of stockholders.** That in all cases after the first meeting of the incorporators, where it is not otherwise provided by the by-laws, the meetings of the stockholders of every corporation shall be held at its principal office in this state. The stockholders and directors may, however, hold their meetings, and have an office or offices outside of this state, if the by-laws so provide; and every corporation shall maintain a principal office or place of business in this state and shall have an agent, resident of this state, in charge thereof.

**Sec. 33. Name of corporation to be displayed.** Every corporation organized under this act, shall have in a conspicuous place, on its principal office, place or places of business, in letters sufficiently large to be easily read, painted or printed the corporate name of such corporation. And every such corporation which shall fail or refuse to comply with the provisions of this section shall be subject to a fine of not less than one hundred dollars, and not more than five hundred dollars, to be recovered with costs by the state, before any court of competent jurisdiction, by action at law to be prosecuted by the attorney-general.

**Sec. 34. Dividends.** The directors of every corporation created under this act shall have power, after reserving over and above its capital stock paid in, such sum, if any, as shall have been fixed by the stockholders, to declare a dividend among its stockholders of the whole of its accumulated profits, in excess of the amount so reserved, and pay the same to such stockholders on demand; provided, that the corporation may, in its certificate of incorporation, or in its by-laws, give the directors power to fix the amount to be reserved.

**Sec. 35. Dividends, how declared and paid.** No corporation created under the provisions of this act, nor the directors thereof, shall make dividends except from the surplus or net profits arising from its business. Dividends may be paid in cash or capital stock at par, but otherwise the corporation shall not divide, withdraw, or in any way pay to the stockholders, or any of them, any part of its capital stock, or reduce its capital stock, except according to this act, and in case of any violation of the provisions of this section, the directors under whose administration the same may happen shall be jointly and severally liable in an action on the case at any time within six years after paying such dividend to the corporation and to its creditors or any of them in the event of its dissolution or insolvency, to the full amount of the dividend made or capital stock so divided, withdrawn, paid out, or reduced, with interest on the same from the time such liability accrued; provided, that any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered at large on the books containing the minutes of the proceedings of the directors, at the time the same was done, or forthwith after he shall have notice of the same, and by causing a true copy of said dissent to be published, within two weeks after the same shall have been so entered, in a newspaper published in the county where the corporation has its principal office.

**Sec. 36. Loans to officers.** No corporation created under this act shall make any loan of money to any officer of such corporation, nor shall any loan be made to a stockholder upon the security of the stock of the corporation, and if any such loan be made, the officer or officers who make it or assent thereto shall be jointly and severally liable until the repayment of the sum so loaned with interest. Nor shall any corporation take as security for any debts a lien upon any part of its capital stock, unless such lien shall be necessary to prevent loss upon a debt previously contracted. Provided, however, that the provisions of this section shall not apply to corporations organized exclusively as building and loan associations.

**Sec. 37. False statement.** If the directors or officers of any corporation organized under the provisions of this act, shall knowingly cause to be published or give out any written statement or report of the condition or business of the corporation that is false in any material respect, the officers and directors causing such report or statement to be published, or given out, or assenting thereto, shall be jointly and severally, individually liable for any loss or damage resulting therefrom.

**Sec. 38. Surrender of corporate rights before beginning business.** Before the payment of any part of the capital and before beginning business for which the corporation was created, the incorporators named in any certificate of incorporation

may surrender all their corporate rights and franchises, by filing in the office of the secretary of state a certificate, verified by the oath or affirmation of a majority of the incorporators named in the certificate of incorporation that no part of the capital has been paid and such business has not been begun, and surrendering all rights and franchises, and thereupon the said corporation shall be dissolved.

**Sec. 39. Dissolution.** If it should be deemed advisable, in the judgment of the board of directors, and most for the benefit of any corporation organized under this act, that it should be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, of which meeting every director shall have received at least three days' notice, shall cause notice of the adoption of such resolution to be mailed to each stockholder residing in the United States, and also beginning within said ten days, cause a like notice to be inserted in a newspaper published in the county wherein the corporation shall have its principal office, at least four weeks successively, once a week, next preceding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolution so adopted by the board of directors, which meeting shall be held between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so named, and which meeting may be on the day so appointed, by consent of a majority in interest of the stockholders present, be adjourned from time to time, for not less than eight days at any one time, of which adjourned meeting notice by advertisement in said newspaper shall be given; and if at any such meeting two-thirds in interest of all the stockholders shall consent that a dissolution shall take place and signify their consent in writing, such consent, together with a list of the names and residences of the directors and officers, certified by the president and secretary and treasurer, shall be filed in the office of the secretary of state, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed, and the board of directors shall cause such certificate to be published four weeks successively, at least once a week, in a newspaper published in said county; and upon the filing in the office of the secretary of state of an affidavit of the manager or publisher of the said newspaper that said certificate has been published four weeks successively, and at least once a week in said newspaper, the corporation shall be dissolved.

Whenever all the stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary, but on filing said consent in the office of the secretary of state, he shall forthwith issue a certificate of dissolution, which shall be published as above provided.

**Sec. 40. Continuation of corporation after dissolution for purposes of suit, etc.** All corporations, whether they expire by their own limitation, or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which said corporation shall have been established.

**Sec. 41. Directors as trustees under dissolution.** Upon the dissolution of any corporation under the provisions of section 39 of this act as amended, the directors, or the governing body, by whatever name it may be known, shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell, and convey the property, real and personal, and divide the moneys and other property among the stockholders, after paying its debts.

**Sec. 42. Trustees may sue, etc.** The persons constituted trustees as aforesaid shall have authority to sue for and recover the aforesaid debts and property, by the name of the trustees of such corporation, describing it by its corporate name, and shall be suable by the same name for the debts owing by such corporation at the time of its dissolution, and shall be jointly and severally responsible for such debts, to the amounts of the moneys and property of such corporation which shall come into their hands or possession.

**Sec. 43. Appointment of receivers.** When any corporation organized under this act shall be dissolved in any manner whatever, the court of chancery, on application of any creditor or stockholder of such corporation, at any time, may either



continue such directors, trustees as aforesaid, or appoint one or more persons to be receivers of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the company, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such trustees or receivers may be continued as long as the chancellor shall think necessary for the purposes aforesaid.

**Sec. 44. Jurisdiction of chancellor.** The court of chancery shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such orders and decrees and issue injunctions therein as justice and equity shall require.

**Sec. 45. Application of assets.** The said trustees or receivers after payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, shall pay the other debts due from the corporation, if the funds in their hands shall be sufficient therefor, and if not, they shall distribute the same ratably among all the creditors who shall prove their debts in the manner that shall be directed by an order or decree of the court for that purpose; and if there shall be any balance remaining after the payment of such debts and necessary expenses, they shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders of the corporation, or their legal representatives.

**Sec. 46. No abatement; suggestion on record.** If any corporation organized under this act becomes dissolved by the expiration of its charter or otherwise, before final judgment obtained in any action pending or commenced in any court of record of this state, against any such corporation, the said action shall not abate by reason thereof, but the dissolution of said corporation being suggested upon the record, and the names of the trustees or receivers of said corporation being entered upon the record, and notice thereof served upon said trustees or receivers, or if such service be impracticable upon the counsel of record in such case, the said action shall proceed to final judgment against the said trustees or receivers by the name of the corporation.

**Sec. 47. Filing of decree or judgment.** Whenever any corporation is dissolved or its charter forfeited by decree or judgment of the court of chancery, the said decree or judgment shall be forthwith filed by the register in chancery of the county in which such decree or judgment shall be entered, in the office of secretary of state, and a note thereof shall be made by the secretary of state on the charter or certificate of incorporation, and on the index thereof, and be published by him in the next volume of laws, which he shall cause to be published.

**Sec. 48. Service of legal process.** Service of legal process upon any corporation created under this act shall be made by delivering a copy thereof personally to the president of such corporation, or by leaving the same at his dwelling house or usual place of abode. If the president resides out of the state service thereof may be made by delivering a copy thereof to the secretary or one of the directors of said corporation, or by leaving the same at the dwelling house or usual place of abode of such secretary or director, or at the principal office or place of business of the corporation in this state. Service by copy left at the dwelling house or usual place of abode, or at the said principal office or place of business in this state to be effective must be delivered thereat at least six days before the return of the process, and in the presence of an adult person; and the officer serving the process shall distinctly state the manner of service in his return thereto; provided, that process returnable forthwith must be served personally.

**Sec. 49. Liability of officers; actions.** When the officers, directors or stockholders of any corporation, organized under this act, shall be liable by the provisions of this act, to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action on the case against any one or more of them and the declaration shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally; or the person to whom they are liable may have his remedy by bill in chancery.



**Sec. 50. Action of officers against corporation for debts paid.** When any officer, director or stockholder shall pay any debt of a corporation for which he is made liable by the provisions of this act, he may recover the amount so paid, in an action against the corporation for money paid for its use, and in which action only the property of the corporation shall be liable to be taken, and not the property of any stockholder.

**Sec. 51. Directors not liable to suit until judgment against corporation returned unsatisfied.** No suit shall be brought against any director or stockholder for any debt of a corporation organized as aforesaid, of which he is such director or stockholder until judgment be obtained therefor against such corporation and execution thereon returned unsatisfied.

**Sec. 52. Inventory by receiver, etc.** Receivers or trustees shall, as soon as convenient, file in the office of the register in chancery of the county in which the corporation's principal place of business is, a full and complete inventory of all the estate, property and effects of the corporation, its nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained, and make a report to the court of their proceedings, whenever and as often as the court shall direct.

**Sec. 53. Proof of claims by creditors.** All creditors shall make proof under oath of their respective claims against the corporation, and cause the same to be filed in the office of the register in chancery of the county in which the corporation's principal place of business is, within six months from the date of the appointment of a receiver or trustee for such corporation, or sooner if the court shall order and direct, and all creditors and claimants failing to do so, within the time limited by this act, or the time prescribed by the order of the court may, by direction of the court be barred from participating in the distribution of the assets of the corporation; the court may also prescribe what notice, by publication or otherwise, shall be given to creditors of the time fixed for the filing and making proof of said claim.

**Sec. 54. Duty of register in regard to claims.** It shall be the duty of the register in chancery, immediately upon the expiration of the time fixed for the filing of claims, in compliance with the provisions of the preceding section of this act, to notify the receiver or trustee of the filing of said claims, and it shall be the duty of said receiver or trustee within thirty days after receiving said notice, to inspect said claims, and if said trustee or any creditor shall not be satisfied with the validity or correctness of the same, or any of them, said receiver or trustee shall forthwith notify the creditors, whose claims are disputed, of his decision; the said receiver or trustee shall require all creditors whose claims are disputed to submit themselves to such examination in relation to their claims as the receiver or trustee shall direct, and such creditors shall produce such books and papers relating to their claims as shall be required; and the receiver or trustee shall have power to examine under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of his determination.

Provided, however, that every creditor or claimant, when he shall have received notice from said receiver or trustee, that he is not satisfied with the said claim as filed in the office of the register in chancery, shall have the right, within ten days thereafter, to demand that the said receiver or trustee shall certify the said claim to the court of chancery, which court shall have jurisdiction to pass upon the said claim as presented, and to determine the rights of the claimant, and to make such order or decree touching the same as shall be equitable and just; and provided, further, that when any creditor or claimant shall submit himself to such examination in relation to his claim, as the receiver or trustee shall direct, and the receiver or trustee shall pass upon and allow or disallow such claim, the creditor or claimant so submitting himself, or any other creditor or claimant, shall have the right of appeal to the court of chancery, which court shall hear and determine the rights of the claimant, and shall make such order or decree touching the same as shall be equitable and just.

**Sec. 55. Receiver as party to suits.** A receiver shall, upon application by him in the court in which any suit is pending, be substituted as party plaintiff or complainant in the place and stead of the corporation in any suit or proceeding at law or in equity which was so pending at the time of his appointment; and no action

against a receiver of a corporation shall abate by reason of his death, but, upon suggestion of the facts on the record, shall be continued against his successor or against the corporation in case no new receiver is appointed.

**Sec. 56. Sale of perishable or deteriorating property.** Whenever the property of an insolvent corporation is at the time of the appointment of a receiver or trustee encumbered with liens of any character, and the validity, extent or legality of any such lien is disputed or brought in question, and the property of the corporation is of a character which will deteriorate in value pending the litigation respecting such lien, the court of chancery may order the receiver or trustee to sell the property of the corporation, clear of all incumbrances, at public or private sale for the best price that can be obtained therefor, and pay the net proceeds arising from the sale thereof after deducting the costs of such sale into the court, there to remain subject to the order of the said court, and to be disposed of as the court shall direct.

**Sec. 57. Lien of employees.** Whenever any corporation, formed under the provisions of this act, shall become insolvent, the employees doing labor or service of whatever character in the regular employ of such corporation, shall have a lien upon the assets thereof for the amount of the wages due to them, not exceeding two months' wages respectively, which shall be paid prior to any other debt or debts of said corporation; but the word "employees" shall not be construed to include any of the officers of such corporation.

**Sec. 58. Compensation of receivers.** The court of chancery, shall, before making distribution of the assets of an insolvent corporation, among the creditors or stockholders thereof, allow a reasonable compensation to the receiver or trustee for his services, and the costs and expenses incurred in and about the execution of his trust, and the costs of the proceedings in said court, to be first paid out of said assets.

**Sec. 59. Merger and consolidation.** Any two or more corporations organized under the provisions of this act, or existing under the laws of this state, for the purpose of carrying on any kind of business may consolidate into a single corporation which may be either one of said consolidating corporations, or a new corporation to be formed by means of such consolidation; the directors, or a majority of them, of such corporations, as desire to consolidate, may enter into an agreement signed by them, and under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation, the mode of carrying the same into effect, and stating such other facts as are necessary to be set out in articles of incorporation, as provided in this act, as well as the manner of converting the shares of each of the old corporations into the new, with such other details and provisions as are deemed necessary.

Said agreement shall be submitted to the stockholders of each corporation, at a meeting thereof, called separately for the purpose of taking the same into consideration; of the time, place and object of which meeting due notice shall be given by publication at least once a week for four successive weeks in one or more newspapers published in the county wherein each corporation either has its principal office or conducts its business, and a copy of such notice shall be mailed to the last known post office address of each stockholder of each corporation, at least twenty days prior to the date of such meeting, and at said meeting said agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote; and if the votes of stockholders of each corporation representing two-thirds in amount of its capital stock shall be for the adoption of the said agreement, then that fact shall be certified on said agreement by the secretary of each corporation, under the seal thereof, and the agreement so adopted and certified shall be signed by the president and secretary of each of said corporations under the corporate seals thereof and acknowledged by the president of each of such corporations before any officer authorized by the laws of this state to take acknowledgments of deeds to be the respective act, deed and agreement of each of said corporations and the agreement so certified and acknowledged shall be filed in the office of the secretary of state, and shall thence be taken and deemed to be the agreement and act of consolidation of the said corporation, and a copy of said agreement and act of consolidation, duly certified by the secretary of state under the seal of his office, shall also be recorded in the offices of the recorders of the counties of this state in which the respective corporations so consolidating shall have their original charters

recorded, or if any of the corporations shall have been specially created by a public act of the legislature, then said agreement shall be recorded in the county where such corporation shall have had its principal place of business, and such record, or a certified copy thereof, shall be evidence of the existence of the corporation created by the said agreement, and of the observance and performance of all antecedent acts and conditions necessary to the creation thereof.

**Sec. 60. When merged existence begins.** When the agreement is signed, acknowledged, filed and recorded, as in the preceding section is required, the separate existence of the constituent corporation shall cease, and the consolidated corporations shall become a single corporation in accordance with the said agreement, possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated, and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the consolidated corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in either of such corporations, shall not revert or be in any way impaired by reason of this act; provided, that all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective former corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it.

**Sec. 61. Payment for stock of dissatisfied stockholders.** If any stockholder in either corporation consolidating as aforesaid, who objected thereto in writing, shall within twenty days after the agreement of consolidation has been filed and recorded, as aforesaid, demand in writing from the consolidated corporation payment of his stock, such consolidated corporation shall, within three months thereafter, pay to him the value of the stock at the date of consolidation; in case of disagreement as to the value thereof, it shall be ascertained by three disinterested persons, one of whom shall be chosen by the stockholder, one by the directors of the consolidated corporation and the other by the two selected as aforesaid; and in case the said award is not paid within sixty days from the making thereof, and notice thereof given to said stockholder and said consolidated corporation, the amount of the award shall be evidence of the amount due by said corporation, and may be collected as other debts are by law collectible; on receiving payment of the award, said stockholder shall transfer his stock to the said consolidated corporation, to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders.

**Sec. 62. Prior suits.** Any action or proceeding pending by or against either of the corporations consolidated may be prosecuted to judgment, as if such consolidation had not taken place, or the new corporation may be substituted in its place.

**Sec. 63. Liabilities of corporations.** The liability of corporations created under this act, or existing under the laws of this state, or the stockholders or officers thereof, or the right or remedies of the creditors thereof, or of persons doing or transacting business with such corporation, shall not in any way be lessened or impaired by the sale thereof, or by the increase or decrease in the capital stock of any such corporation, or by the consolidation of two or more corporations, or by any change or amendment in the articles of incorporation.

**Sec. 64. Powers of consolidated corporation.** When two or more corporations are consolidated, the consolidated corporation shall have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make, or obligations it will be required to assume, in order to effect such consolidation; to secure the payment of which bonds and obligations it shall be lawful to mortgage its corporate franchise, rights, privileges and property, real, personal and mixed; and may issue

capital stock to such an amount as may be necessary, to the stockholders of such consolidated corporation in exchange or payment for the original shares, in the manner and on the terms specified in the agreement of consolidation.

**Sec. 65. Sale of franchise.** If the franchise and property of any corporation formed under the provision of this act, or existing under the law of this state is sold, the persons who may become the purchasers, at private sale or under the judgment of the court, may organize a corporation for the continuation, operation and management of the same; and such corporation, when organized, shall have the same rights, privileges and franchises as have been granted to, or acquired by the corporation purchased; and shall be subject to all the limitations, restrictions and liabilities imposed upon it; and, in addition thereto, shall be subject to all the provisions of this act. Such corporation shall be formed by articles of incorporation executed by the purchaser and his associates, and which shall, in addition to the requirements of the provisions of this act, set forth the description of the property sold and the decree under which the sale was made; if it was sold under judgment, or if not, the deed conveying the property; the amount paid or to be paid, and to whom and by whom, and such other statements as may be deemed necessary. The article shall be signed by the purchaser and his associates, if any, and shall be filed in the office of the secretary of state, who shall furnish a certified copy of the same under his hand and seal of office, which shall be recorded as herein-before provided for certificates of incorporation; and when a certificate of such fact is delivered to the purchaser the corporation shall be deemed to be organized, and shall have all the rights, powers and privileges, and be subject to all restrictions, limitations and liabilities of other similar corporations organized under this act.

**Sec. 66. Judicial sale of franchise.** Sales of the property and franchises of such corporations that may be sold under a decree of court shall be made after such notice of the time and place as the court may deem proper; and if such sales are made in the foreclosure of one or more mortgages, the court may order such sale to be made for the whole amount of the outstanding bonds and interest secured by such mortgage or mortgages or if the property and franchise will produce so much, then for the amount of interest due under said mortgage or mortgages, subject to the payment by the purchaser of the outstanding bonds and interest secured thereby as they become due; and in the latter event may, by proper orders, secure the assumption thereof by the purchaser; but when a sale shall be ordered to be made, subject as aforesaid, the court shall direct the officer making such sale, in the event that the property and franchises offered do not sell for enough to pay the amount aforesaid, to sell the same free from encumbrances. Sales under this section shall be made on such credits as the court may deem proper.

**Sec. 67. Forfeiture of charter for failure to commence business.** Any corporation organized under this act shall forfeit all rights, privileges, and franchises obtained thereunder, if it shall fail, for two years after its organization, to commence in good faith the business, or to promote the object or purposes for which it was organized.

**Sec. 68. Want of legal organization no defence in actions.** No corporation organized under this act or existing under the laws of this state, shall be permitted to set up, or rely upon the want of legal organization as a defense to any action against it; nor shall any person transacting business with such corporation, or sued for injury done to its property, be permitted to rely upon such want of legal organization as a defense.

This section shall not be construed to prevent judicial inquiry into the regularity or validity of the organization of the corporation or its lawful possession of any corporate power it may undertake to assert in any other suit or proceeding where its corporate existence or the power to exercise the corporate rights it asserts is challenged, and evidence tending to sustain such challenge shall be admissible in any such suit or proceeding.

**Sec. 69. Issuing new certificates of stock for lost or destroyed.** Every corporation organized under this act, may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the directors may, in their discretion, require the owner of the lost or destroyed certificate, or his legal representatives, to give the corporation a bond, in such sum as they may direct, not exceeding double the value of the stock, to indemnify the corporation against any claim that may be made against it on account of the alleged

loss of any such certificate; a new certificate may be issued without requiring any bond when, in the judgment of the directors it is proper so to do, and when any such corporation shall have refused to issue a new certificate of stock in place of one theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost or destroyed, the owner of the lost or destroyed certificate or his legal representatives, may apply to the superior court of the state of Delaware in and for the county in which the principal office of the corporation is located for an order requiring the corporation to show cause why it should not issue a new certificate of stock in place of the one so lost or destroyed; such application shall be by petition duly verified, in which shall be stated the name of the corporation, the number and date of certificate, if known or ascertainable by the petitioner, the number of shares of stock named therein and to whom issued, and a statement of the circumstances attending such loss or destruction; thereupon said court shall make an order requiring the corporation to show cause at a time and place therein mentioned, why it should not issue a new certificate of stock in place of the one described in the petition; a copy of the petition or order shall be served upon the president or other head officer of the corporation, or on the cashier, secretary, treasurer, or any director thereof personally or left at the principal office or place of business of the corporation in this state at least five days before the time designated in the order.

**Sec. 70. Procedure.** At the time and place specified in the order, and on proof of service thereof, the court shall proceed to hear the proofs and allegations in behalf of the parties in interest, relative to the subject matter of inquiry, and if upon such hearing the court shall be satisfied that the petitioner is the lawful owner of the number of shares of capital stock, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed and cannot be found, and no sufficient cause has been shown why a new certificate should not be issued in place thereof, it shall make an order requiring the corporation, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares of the capital stock of the corporation, which shall be specified in the order as owned by the petitioner, and the certificate for which shall have been lost or destroyed; in making the order the court shall direct that the petitioner file such bond in such form and with such security as to the court shall appear sufficient to indemnify any person who shall thereafter appear to be the lawful owner of such certificate stated to be lost or stolen; any person who shall thereafter claim any rights under the certificate so lost or destroyed, shall have recourse to said indemnity, and the corporation shall be discharged from all liability to such person by reason of compliance with the order of court; and obedience to said order may be enforced by the court by attachment against the officers of the corporation, on proof of the refusal to comply with the same.

**Sec. 112. Stock, personal estate, transfer of.** That the stock of every company formed under this act shall be deemed personal estate and be transferable in the manner prescribed by the by-laws of the company, but no share shall be transferable until all previous calls thereon shall have been paid.

**Sec. 130. Situs of corporation stock.** For all purposes of title, action, attachment, garnishment, and jurisdiction of all courts held in this state, but not for the purpose of taxation, the situs of the ownership of the capital stock of all corporations existing under the laws of this state whether organized under this act or otherwise, shall be regarded as in this state.

**Sec. 131. Renewal of charters.** Any corporation, existing under the laws of this state, may, at any time before the expiration of the time limited for its existence, procure a renewal of its charter for any period, together with all the rights, franchises, privileges and immunities, and subject to all its existing debts, duties and liabilities, secured or imposed by its then existing charter, by filing a certificate of its president and secretary, or in case of meadow companies or companies incorporated for the purpose of draining and reclaiming low lands by filing a certificate of a majority of its managers, duly sworn or affirmed to by such officers before any person authorized by the laws of this state to administer oaths or affirmations, with the secretary of state which certificate shall set forth: 1. The name of the corporation, which shall be the existing name of said corporation at the time of such renewal; 2. The name of the city, town or place within the county in which its principal office or place of business is located in this state; 3. The date when such renewal is to com-

mence, which date shall be prior to the date of the expiration of the charter desired to be renewed, whether or not such renewal is to be perpetual, and, if not perpetual, the time for which such renewal is to continue; 4. That the corporation desiring to renew and so renewing its charter is duly organized and carrying on the business authorized by its existing charter.

**Sec. 132. Filing certificate, and recording copy.** Such certificate for the renewal and continuance of the existence of any such corporation shall be filed in the office of the secretary of state, who shall furnish a certified copy of the same under his hand and seal of office; said certified copy shall be recorded in the office of the recorder of the county in which the principal office of said corporation is located in this state, in a book kept for the purpose; and said certificate or a certified copy thereof duly certified under the hand of the secretary of state and his seal of office accompanied with the certificate of the recorder of the county wherein the same is recorded under his hand and seal of his office, stating that it has been recorded, the record of the same in the office of the recorder aforesaid, or a copy of said record duly certified by the recorder aforesaid, or the record of such certified copy recorded in the recorder's office aforesaid, shall be evidence in all courts of law and equity of this state.

**Sec. 133. State fees.** Upon the renewal of the existence of any corporation it shall pay to the secretary of state, for the use of the state, a tax of twenty dollars before the delivery of a certified copy of its certificate of renewal by him to it.

**Sec. 134. Renewal.** Any corporation desiring to renew, extend and continue its corporate existence, shall upon complying with the provisions of sections 131, 132 and 133 of this act, as amended, and with the provisions of section 2 of article 9 of the constitution of this state, be and continue for the time stated in its certificate of renewal, a corporation, and shall, in addition to the rights, privileges and immunities conferred by its original charter, possess and enjoy all the benefits of this act, which are applicable to the nature of its business, and shall be subject to the restrictions and liabilities by this act imposed on such corporations.

**Sec. 135. May hold stock, etc., of other corporations.** Any corporation organized under the laws of this state, whether created by this act, special act of legislature or general law, may guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, the shares of the capital stock of, or any bonds, securities or evidence of indebtedness created by any other corporation or corporations of this state or any other state, country, nation, or government, and while owner of said stock may exercise all the rights, powers and privileges of ownership including the right to vote thereon.

**Sec. 136. Plea of usury.** No corporation or corporations issuing bonds under the provisions of this act shall plead any statute or statutes against usury in any court of law or equity in any suit instituted to enforce the payment of such bonds or mortgages.

**Sec. 137. Change of location of principal office.** The board of directors of any corporation organized under the laws of this state may change the location of the principal office of such corporation within this state to any other place within this state by resolution adopted at a regular or special meeting of such board.

Upon the adoption of a resolution as aforesaid, a copy thereof shall be filed in the office of the secretary of state, signed by the president and secretary of such corporation, and sealed with its corporate seal; and a certified copy recorded in the office of the recorder in and for the county to which said principal office is removed; for filing the said certificate, the secretary of state shall charge a fee of five dollars.

**Sec. 138. Waiver of notice.** Whenever any notice whatever is required to be given under the provisions of this act, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

**Sec. 139. Repeal.** All laws or parts of laws inconsistent with the provisions of this act are hereby repealed; provided, however, that all rights, privileges and immunities vested or accrued by and under prior laws, all suits pending, all rights of action conferred, and all duties, restrictions, liabilities, and penalties imposed or required by and under laws prior hereto shall not be impaired, diminished, or affected hereby.

**Sec. 140. Reservation of right to amend or repeal.** This act may be amended or repealed, at the pleasure of the legislature, but such amendment or repeal shall

not take away or impair any remedy against any corporation under this act, or its officers, for any liability which shall have been previously incurred; this act and all amendments thereof shall be a part of the charter of every such corporation except so far as the same are inapplicable and inappropriate to the objects of such corporation.

## **Laws, 1903, c. 395. An Act in relation to Foreign Corporations doing Business in this State.**

**Sec. 1. Duty of foreign corporation.** That it shall not be lawful for any corporation created by the laws of any other state, or the laws of the United States, to do any business in this state through or by branch offices, agents or representatives located in this state, until it shall have filed in the office of secretary of state of this state a certified copy of its charter and the name or names of its authorized agent or agents in this state, together with a sworn statement of the assets and liabilities of such company or corporation, and paid to the secretary of state, for the use of the state, fifty dollars (\$ 50); and the certificate of the secretary of state under his seal of office, of the filing of such charter, shall be delivered to such agent or agents upon the payment to said secretary of state of the usual fees for making certified copies; the said certificate shall be prima facie evidence of such company's right to do business in this state.

**Sec. 2. Duty of secretary of state.** That it shall be the duty of the secretary of state after issuing the certificate aforesaid, and delivering the same to agent or agents of said foreign corporation to issue certificate to the prothonotary of the superior court of each county of the state of Delaware, containing the name of the agent or agents of the said foreign corporation, and the state wherein incorporated.

**Sec. 3. Duty of prothonotary.** The prothonotary of the superior court of the state of Delaware in each county of this state shall procure and keep a book, which is hereby named "Record of Agents of Foreign Corporations," and shall enter and record therein the name of every foreign corporation, certified by the secretary of state as aforesaid, the name of such person or agent, the name of the state in which said corporation is incorporated, and the date of the filing of such certificate in the office of the secretary of state; and for making the above entries the prothonotary making the same shall receive from each foreign corporation a fee of one dollar, to be collected from each corporation aforesaid, and paid over by the secretary of state.

**Sec. 4. Service to be upon agent.** That all process sued out in this state in any court of this state against such corporation, all orders made by any court of this state, all rules and notices of any kind required to be served on or given to any such corporation, may, after the first day of May, A. D. 1903, be served on or given to such person or agent so certified as aforesaid, and such service or notice shall be as effectual and shall operate as if it had been served on or given to said corporation.

**Sec. 5. Change of agent.** Any such foreign corporation, by filing a certificate of same kind and nature, executed as aforesaid, may change such agent or person and substitute another person or agent for the purposes aforesaid, provided, however, every such person or agent mentioned in this act shall at the time of his appointment be a resident of this state. And provided further, however, if any person or agent designated and certified as prescribed in this act, shall die or remove from this state, then the foreign corporation for which such person or agent had been so designated and certified shall, within ten days after the death or removal as aforesaid of such agent or person, substitute, designate and certify to the secretary of state, the name of another person or agent for the purposes aforesaid, and all process, orders, rules and notices mentioned in section 4 of this act, may be served on or given to such substituted person or agent with like effect as is prescribed in said section 4 of this act.

**Sec. 6. Penalties.** That any foreign corporation engaging in, prosecuting or transacting any business of any kind within the limits of this state on and after the first of May, A. D. 1903, without first having complied with the provisions of this act, shall be guilty of misdemeanor and upon conviction thereof shall be fined not less than two hundred dollars nor more than five hundred dollars for

each and every offence. Any agent of any foreign corporation that shall transact any business within the limits of this state for any foreign corporation before such foreign corporation has complied with all the provisions of this act shall be guilty of misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each and every offence.

**Sec. 7. Not to possess banking power.** That no foreign corporation as aforesaid shall within the limits of this state, by any implication or construction, be deemed to possess the power of discounting bills, notes, or other evidence of debt, of receiving deposits, of buying gold or silver bullion or foreign coin, of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt upon loan for circulation as money, anything in its charter or articles of incorporation to the contrary thereof notwithstanding. And all certificates to be hereafter issued by the secretary of state under the provisions of this act shall expressly set forth the limitations and restrictions contained in the preceding proviso.

**Sec. 8. Insurance companies.** That the provisions of this act shall not apply to insurance companies doing business in this state.

**Sec. 9. Application of act to corporations that have complied with former laws.** That chapter 513, volume 20, Laws of Delaware, and chapter 703, volume 19, Laws of Delaware, be and the same are hereby repealed. Provided, that any foreign corporation which has already complied with the laws of this state in relation to foreign corporations shall not be required to comply with the provisions of this act so far as the payment of the said sum of fifty dollars is concerned.

**Sec. 10. Public act.** This shall be deemed and taken to be a public act.

## Illinois.

### Laws, 1871—72, p. 291. An Act concerning Corporations (April 18, 1872).

**Sec. 1. For all lawful purposes. Exceptions.** That corporations may be formed in the manner provided by this act, for any lawful purpose except banking, insurance, real estate brokerage, the operation of railroads, and the business of loaning money: Provided, that horse and dummy railroads, and organizations for the purchase and sale of real estate, for burial purposes only, may be organized and conducted under the provisions of this act: And provided further, that corporations formed for the purpose of constructing railroad bridges shall not be held to be railroad corporations.

**Sec. 2. Licenses; how obtained.** Whenever any number of persons not less than three, nor more than seven, shall propose to form a corporation under this act, they shall make a statement to that effect under their hands and duly acknowledged before some officer in the manner provided for the acknowledgment of deeds, setting forth the name of the proposed corporation, the object for which it is to be formed, its capital stock, the number of shares of which such stock shall consist, the location of the principal office, and the duration of the corporation, not to exceed ninety-nine years, which statement shall be filed in the office of the secretary of state. If the object for which said corporation is proposed to be organized is clearly and definitely stated, and is a lawful object, the secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of said corporation at such times and places as they may determine; but no license shall be issued to two companies having the same or a similar name, nor shall any foreign corporation having the same or a similar name as any domestic corporation be admitted to this state under any foreign corporation law and no domestic corporation shall hereafter be organized with the same or a similar name as any foreign corporation previously admitted to do business in this state. Upon the filing of any statement with the secretary of state for the purpose of obtaining a license to incorporate, he may propound such interrogatories as he shall deem necessary to ascertain the true object: Provided, that the attorney-general may file a bill in chancery in the name of the people of the state of Illinois, against any corporation authorized to confer degrees, diplomas, or other certificate or certificates of qualification in the science of medicine, pharmacy, or dentistry which conducts a fraudulent business or abuses, misuses, or violates the terms of its charter, in any court having jurisdiction of the corporation and subject-matter



of such bill, for an injunction to restrain said corporation from conducting its business fraudulently or abusing, misusing, or violating the terms of its charter and also for the dissolution of said corporation, and thereupon it shall be the duty of the court in which said bill is filed to grant such injunction and to hear and determine the same as in other cases in chancery: And provided, further, that this act shall apply to schools, colleges, or universities which now are, or may hereafter be licensed in this state, notwithstanding any provisions that may exist in their charters.

**Sec. 3. Meeting to organize.** As soon as may be, after the capital stock shall be fully subscribed, the commissioners shall convene a meeting of the subscribers, for the purpose of electing directors or managers, and the transaction of such other business as shall come before them. Notice thereof shall be given by depositing in the postoffice, properly addressed to each subscriber, at least ten days before the time fixed, a written or printed notice, stating the object, time, and place of such meeting. In all elections for directors or managers of corporations organized under this act, every subscriber or stockholder shall have the right to vote in person, or by proxy, for the number of shares owned or subscribed by<sup>s</sup> him, for as many persons as there are directors or managers to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors or managers multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner. It shall be lawful for any such corporation, by resolution of the stockholders, to divide its board of directors or managers into three classes, numbered consecutively, the term of office of the first class to expire on the day of the annual election of said company then next ensuing; the second class one year thereafter, and the third class two years thereafter. At each annual election, after such classification, the stockholders of such company shall elect, for a term of three years a number of directors or managers equal to the number in the class whose term expires on the day of such election. All other vacancies to be filled in accordance with the by-laws of the corporation.

**Sec. 4. Organization completed.** The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the foregoing section, a copy of the subscription list, a statement of the amount of the capital, not less than one-half actually paid in, the amount of such capital not paid in, what disposition has been made of stock subscribed and not paid, and if any proportion of the capital has been paid in property, the same shall be appraised by said commissioners and they shall report the fair cash value thereof; the names of the directors or managers elected and their respective terms of office, which report shall be sworn to by at least a majority of the commissioners and shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue a certificate of the complete organization of the corporation, making a part thereof a copy of all the papers filed in his office in and about the organization of the corporation, and duly authenticated under his hand and seal of state, and the same shall be recorded in a book for that purpose, in the office of the recorder of deeds of the county where the principal office of such company is located. Upon the recording of the said copy, the corporation shall be deemed fully organized and may proceed to business. Unless such company shall be organized and shall proceed to business as provided in this act within two years after the date of such license, then such license shall be deemed revoked, and all proceedings thereunder void.

**Sec. 5. Powers; restriction as to real estate.** Corporations formed under this act shall be bodies corporate and politic for the period for which they are organized; may sue and be sued; may have a common seal which they may alter or renew at pleasure; may own, possess, and enjoy so much real and personal estate as shall be necessary for the transaction of their business, and may sell and dispose of the same when not required for the uses of the corporation. They may borrow money at legal rates of interest, and pledge their property, both real and personal, to secure the payment thereof; and may have and exercise all the powers necessary and requisite to carry into effect the objects for which they may be formed: Provided, however, that all real estate, so acquired in satisfaction of any liability or indebtedness, unless the same may be necessary and suitable for the business of such corporation, shall be offered at public auction at least once every year, at the door of the court house of the county wherein the same be situated, or on the premises to be sold, after giving notice thereof for at least four consecutive weeks in some

newspaper of general circulation published in said county; and if there be no such newspaper published therein, then in the nearest adjacent county where such newspaper is published; and said real estate shall be sold whenever the price offered for it is not less than the claim of such corporation, including all interest, costs, and other expense: And, provided, further, that in case such corporation shall not, within such period of five years, sell such land, either at public or private sale as aforesaid, it shall be the duty of the state's attorney to proceed by information, in the name of the people of the state of Illinois, against such corporation, in the circuit court of the county within which such land, so neglected to be sold, shall be situated, and such court shall have jurisdiction to hear and determine the fact, and to order the sale of such land or real estate at such time and place subject to such rules as the court shall establish. The court shall tax as the fees of the state's attorney such sum as shall be reasonable; and the proceeds of such sale, after deducting the said fees and costs of proceeding, shall be paid over to such corporation. The provisions of this section shall apply to and be binding upon all corporations now existing by virtue of any special charter granted by this state.

**Sec. 6. Directors; officers; by-laws.** The corporate powers shall be exercised by a board of directors or managers: Provided, the number of directors or managers shall not be increased or diminished, or their term of office changed, without the consent of the owners of a majority of the shares of stock. The officers of the company shall consist of a president, secretary, and treasurer, and such other officers and agents as shall be determined by the directors or managers, and the directors or managers may adopt by-laws for the government of the officers and affairs of the company: Provided, they are not inconsistent with the laws of this state. The directors or managers may require of the officers and agents bonds, with such sureties and conditions as they shall deem proper and may remove any officers when the interest of the corporation shall require. The officers shall hold their respective offices for the period provided by the by-laws.

**Sec. 7. Stock; instalments; compelling payments.** The shares of stock shall be not less than ten nor more than one hundred dollars each, and shall be deemed personal property, and transferrable as such in the manner provided by the by-laws, and subscriptions therefor shall be made payable to the corporation, and shall be payable in such instalments and at such time or times as shall be determined by the directors or managers, and an action may be maintained in the name of the corporation to recover any instalment which shall remain due and unpaid for the period of twenty days after personal demand therefor, or, in cases where personal demand is not made, within thirty days after a written or printed demand has been deposited in the postoffice properly addressed to the postoffice address of the stockholder. The directors may, by by-laws prescribe other penalties for a failure to pay the instalments that may from time to time become due, but no penalty working a forfeiture of stock, or of the amounts paid thereon shall be declared as against any estate before distribution shall have been made or against any stockholder before demand shall have been made for the amount due thereon, either in person or by a written or printed notice duly mailed to the proper address of such stockholder at least thirty days prior to the time when such forfeiture is to take effect: Provided, that proceeds of said sale over and above the amount due on said shares shall be paid to the delinquent stockholder.

**Sec. 8. Transfers of stock; liability of stockholders.** Every assignment or transfer of stocks on which there remains any portion unpaid shall be recorded in the office of the recorder of deeds of the county within which the principal office is located, and each stockholder shall be liable for the debts of the corporation to the extent of the amount that may be unpaid upon the stock held by him, to be collected in the manner herein provided. No assignor of stocks shall be released from any such indebtedness by reason of any assignment of his stock, but shall remain liable therefor, jointly with the assignee, until the said stock be fully paid. Whenever any action is brought to recover any indebtedness, against the corporation, it shall be competent to proceed against any one or more stockholders at the same time to the extent of the balance unpaid by such stockholders upon the stock owned by them, respectively, whether called in or not, as in cases of garnishment. Every assignee or transferee of stock shall be liable to the company for the amount unpaid thereon, to the extent and in the same manner as if he had been the original subscriber.

**Sec. 9. Legislative power reserved.** The general assembly shall, at all times, have power to prescribe such regulations and provisions as it may deem advisable, which regulations and provisions shall be binding on any and all corporations formed under the provisions of this act: And, provided further, that this act shall not be held to revive or extend any private charter or law heretofore granted or passed concerning any corporation.

**Sec. 10. Continued after expiration of charter.** All corporations organized under this law, whose powers may have expired by limitation or otherwise, shall continue their corporate capacity during the term of two years for the purpose only of collecting the debts due said corporation and selling and conveying the property and effects thereof.

**Sec. 11. Rights after expiration of charter.** Such corporations shall use their respective names for the purposes aforesaid, and shall be capable of prosecuting and defending all suits in law or equity.

**Sec. 12. Remedies saved.** The dissolution, for any cause whatever, of any corporation created as aforesaid, shall not take away or impair any remedy given against such corporation, its stockholders, or officers, for any liabilities incurred previous to its dissolution.

**Sec. 13. Books of account; inspection of.** It shall be the duty of the directors or trustees of every stock corporation to cause to be kept at its principal office or place of business in this state, correct books of account of all its business, and every stockholder in such corporation shall have the right at all reasonable times, by himself or by his attorney, to examine the records and books of account of the corporation.

**Sec. 14. Failure to elect officers; not to dissolve.** A failure to elect directors, trustees, or officers in lieu of trustees, on the day named and designated in the by-laws, or on the day for which notice was given for election, shall not have the effect of dissolving the corporation; but such election may be held at any time after proper notice.

**Sec. 15. Assessments, etc.** All assessments or instalments of the stock of any stock corporation shall be levied by the directors in accordance with the provisions of the by-laws, but any assessment or instalment required to be paid shall be levied pro rata upon all the shares of such stock.

**Sec. 16. When directors and officers liable for debt.** If the indebtedness of any stock corporation shall exceed the amount of its capital stock, the directors and officers of such corporation assenting thereto, shall be personally and individually liable for such excess to the creditors of such corporation.

**Sec. 17. Annual statement of real estate.** The president, secretary, or treasurer of every stock corporation, shall annually, within twenty days from the first day of December, make a statement in writing, setting forth a description of all real estate to which title was acquired in securing any debt or liability due such corporation, together with the time of acquiring title thereto; which statement shall be verified by the oath or affirmation of such president, secretary, or treasurer, and be recorded in the office of the recorder of the county, and filed in the office of the secretary of state.

**Sec. 18. Assuming corporate powers without complying with this act.** If any person or persons, being or pretending to be, an officer or agent or board of directors of any stock corporation, or pretended stock corporation, shall assume to exercise corporate powers; or use the name of any such corporation, or pretended corporation, without complying with the provisions of this act, before all stock named in the articles of incorporation shall be subscribed in good faith, then they shall be jointly and severally liable for all debts and liabilities made by them and contracted in the name of such corporation or pretended corporation.

**Sec. 19. Dividends of insolvent company; liability.** If the directors or other officers or agents of any stock corporation shall declare and pay any dividend when such corporation is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, all directors, officers, or agents assenting thereto shall be jointly and severally liable for all the debts of such corporation then existing, and for all that shall thereafter be contracted while they shall, respectively, continue in office.

**Sec. 20. Meeting of officers.** The by-laws of every corporation shall provide for the calling of meetings of the directors, trustees, or other officers corresponding

to trustees; and when all such officers shall be present at any meeting, however called or notified, or shall sign a written consent thereto on the record of such meeting, the acts of such meeting shall be as valid as if legally called and notified: Provided, that the action of any meeting held beyond the limits of this state, shall be void, unless such meeting was authorized, or its acts ratified by a vote of two-thirds of the directors, trustees, or officers corresponding to trustees, at a regular meeting.

**Sec. 21. False reports, etc. Liability.** If any certified report or statement made, or public notice given by the officers of any corporation, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all damages arising therefrom.

**Sec. 22. Stockholders' meeting.** The stockholders of any stock corporation, owning two-thirds of the stock in such corporation, upon which all assessments have been fully paid up, may call a meeting of the stockholders of such corporation by signing a call therefor with their proper names, stating the number of shares held by each and filing the same with the president or secretary of such corporation and publishing the same in a newspaper in this state where the principal office of such corporation is kept, and at the seat of government, for three successive weeks prior to the time fixed for holding such meeting, and mailing a copy thereof to each of the directors of said corporation at his usual place of abode. And the secretary of such corporation shall enter such call upon the records thereof, and the fact of such publication, and mailing such notice, giving the name of such paper, with the dates and places of publication, which shall be prima facie evidence thereof.

**Sec. 23. Executors, etc. Liabilities.** No person holding stock in any corporation as executor, administrator, conservator, guardian, or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such corporation; but the person pledging such stock shall be considered as holding the same and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, conservator, guardian, or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund, would have been if he had been living and had been competent to act and held the stock in his own name.

**Sec. 24. Executors, etc.; may vote.** Every executor, administrator, guardian, or trustee shall represent the stock in his hands at all meetings of any stock corporation, and may vote accordingly as a stockholder, and every person who shall pledge his stock may, nevertheless, represent the same at all meetings, and may vote accordingly as a stockholder.

**Sec. 25. Suit against stockholders.** If any corporation, or its authorized agents, shall do or refrain from doing any act which shall subject it to a forfeiture of its charter or corporate powers, or shall allow any execution or decree of any court of record for a payment of money, after demand made by the officer to be returned "no property found", or to remain unsatisfied for not less than ten days after such demand, or shall dissolve or cease doing business, leaving debts unpaid, suits in equity may be brought against all persons who were stockholders at the time, or liable in any way for the debts of the corporation by joining the corporation in such suit; and each stockholder may be required to pay his pro rata share of such debts or liabilities, to the extent of the unpaid portion of his stock, after exhausting the assets of such corporation, and if any stockholder shall not have property enough to satisfy his portion of such debts or liabilities, then the amount shall be divided equally among all the remaining solvent stockholders; and courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, to appoint a receiver therefor who shall have authority, by the name of the receiver of such corporation (giving the name), to sue in all courts, and do all things necessary to closing up its affairs as commanded by the decree of such court. Said receiver shall be in all cases a resident of the state of Illinois, and shall be required to enter into bonds, payable to the people of the state of Illinois, for the use of the parties interested, in such penalty and with such securities as the court may, in the decree or order appointing the same, require. In all cases of suits for or against such receiver or the corporation of which he may be receiver, writs may issue in favor of such receiver or corporation, or against him or it, from the county where the cause of action accrued to the sheriff of any county in this State for service.

**Sec. 26. Foreign corporations. Real estate.** Foreign corporations, and the officers and agents thereof, doing business in this state, shall be subjected to all the liabilities, restrictions, and duties that are or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers. And no foreign or domestic corporation established or maintained in any way for the pecuniary profit of its stockholders or members, shall purchase or hold real estate in this state except as provided for in this act.

**Sec. 27. Certified copy of charter evidence.** The certified copy of any articles of incorporation, and changes thereof, together with all indorsements thereon, under the great seal of the state of Illinois, shall be taken and received in all courts and places as prima facie evidence of the facts therein stated.

**Sec. 28. Location of street railroads. Consent.** Nothing in this act shall be construed to allow the construction or operation of any street railroad in any city, town, or incorporated village, without the consent of the local authorities thereof.

**Sec. 28<sup>1/2</sup>. Reincorporation under same name.** It shall be unlawful for the secretary of state to issue a license for any person or persons to incorporate, under the name of any heretofore existing corporation organized under any general law of this state, until the expiration of thirty days from and after the expiration of the existence of such corporation: Provided, that the corporation enjoying such name shall have the exclusive privilege of becoming incorporated under the same name at any time within the said thirty days, according to the provisions of the act to which this is an amendment.

---

**Laws, 1897, p. 285. An Act to authorize Mining or Manufacturing Companies to own and hold Shares of the Capital Stock, and to own and hold Securities of Railroad Companies whose Roads shall connect the different Plants of such Mining and Manufacturing Companies with each other or with other Railroads or Harbors (June 11, 1897).**

**Sec. 1. Be it enacted by the people of the state of Illinois, represented in the general assembly.** That an act entitled, "An act to authorize mining or manufacturing companies to own and hold shares of the capital stock, and to own and hold securities of railroad companies whose roads shall connect the different plants of such mining or manufacturing companies with each other or with other railroads or harbors", approved on the 21st day of June, 1893, and in force on the 1st day of July, 1893, be and the same is hereby amended so as to read as follows: **Sec. 1.** That any corporation organized, or to be organized under and by virtue of any law of this state for mining or manufacturing purposes be and the same is hereby authorized to own and hold shares of the capital stock and to own and to hold securities of any railroad company or companies when such railroad or railroads shall connect the different plants of such mining or manufacturing companies with each other or with other railroads or harbors: Provided, that said mining or manufacturing companies shall not be permitted to hold stock in more than one railroad connecting the same point.

---

**Laws, 1901, p. 124. An Act requiring Corporations to make Annual Report to the Secretary of State, and providing for the Cancellation of Articles of Incorporation for Failure to do so, and to repeal a certain Act therein named (May 10, 1901).**

**Sec. 1. Corporations to file post-office address of business office.** That every corporation hereafter organized under the laws of this state shall, before receiving a certificate of complete organization, file with the secretary of state a statement setting forth the post-office address of its business office, giving street and number.

**Sec. 2. Corporations to report annually to secretary of state; report to be signed and sworn to; fee for filing; cancellation of charter for failure to report.** Every incorporated company other than railroad, banking, building and loan and insurance companies, religious corporations, and corporations not organized for pecuniary

profit, existing by virtue of any general or special law of this state, or hereafter organized by virtue of any law of this state, shall annually, between the first day of February and the first day of March report to the secretary of state the location of its principal office in this state with town, street and number, the names of its officers with their residence, stating the town, street, and number, with the date of the expiration of their respective terms of office, whether or not the corporation is pursuing an active business under its charter, and the kind of business engaged in, if any, which said report shall be made under the seal of the corporation, and shall be signed and sworn to by the president, secretary, or other officer of the corporation, and, in case said corporation is in the hands of an assignee or receiver, then such report shall be signed and sworn to by such assignee or receiver, which said report together with a fee of one dollar for filing the same, shall be sent to the secretary of state, in whose office it shall be filed. The secretary of state shall in no case receive or file said report until said fee is paid, and a failure to make said report and pay said fee shall be prima facie evidence that said corporation is out of business, and shall work a forfeiture of the charter of such corporation. And it is hereby made the duty of the secretary of state to enter upon the records of his office, as soon as practicable after default in making such report, the cancellation of the charter of all corporations failing to make said report, at the time and in the manner herein provided.

**Sec. 3. Secretary of state to mail blank reports and copy of section 2 of this act; publication of notice.** The secretary of state is hereby required, on or before the 15th day of January of each year, to mail to every corporation proper blanks to be used in making the report hereinbefore provided for, also a copy of section three [two] of this act, together with a notice that a failure on the part of said corporation to make such report within the time prescribed by law shall be taken as prima facie evidence that such corporation is out of business, and that upon such failure its articles of incorporation will be cancelled upon the records of the office of the secretary of state: Provided, that where a corporation is located in a city of 50,000 inhabitants or upwards, and the records in the office of the secretary of state do not disclose in its address the location by street and number of such corporation, it shall be the duty of the secretary of state, in lieu of mailing the notice, copy of law and blank herein provided, to publish, on or before the 15th of January of each year, in some newspaper of general circulation, printed and published in the county in which said city is located, a copy of section three [two] of this act, together with a list of all corporations in said city to which this act applies, except those to which notices are required to be mailed as provided for in this section: Provided further, that where the records in the office of the secretary of state fail to show in what town or county any corporation is located, then the above notice may be given in any newspaper of general circulation published in this state, and that such notice shall not be published more than once as to any one corporation.

**Sec. 4. Papers publishing notices to furnish copies.** The publishers of the newspapers printing the notices provided for in this act shall, immediately after such publication, transmit by mail to the secretary of state, auditor of public accounts, state treasurer, and recorder of deeds of the county in which said paper is published a copy of the paper containing said notice and list with a certificate by the publisher, verified by oath, that said notice and list appeared in every copy of the issue of that date and that it was distributed to all patrons of said paper in the regular way.

**Sec. 5. Fee for publication.** The fee for publication is hereby fixed at five cents per line of the width of a newspaper column for the publication of said copy of law and notice, and five cents for each corporation named.

**Sec. 6. Secretary of state to furnish certified copies of reports to recorders of deeds.** The secretary of state is hereby required, on or before the first day of July, 1902, or as soon thereafter as practicable to file with the recorder of deeds of each county in this state a certified list of all corporations which have made the report hereinbefore provided for, with the names and addresses of their president and secretary, or of their principal officers or manager, together with the location by city, street and number of their principal business office in this state, which list shall be filed in the offices of said recorders for public reference; and annually thereafter, on or before the first day of July, the secretary of state shall file a similar list of all additional corporations which have made such report, and also a list

of all corporations previously certified which have since been cancelled for non-compliance with said law.

**Sec. 7. Reinstatement of corporations.** It is further provided, that any corporation which is pursuing an active business under its charter, failing to make said report at the time provided by law may, at any time, within one year from such default, be reinstated upon the records of the office of the secretary of state upon the payment of a fee in the sum of \$ 20.00 for such reinstatement and filing in said office an affidavit stating all the facts required in section three [two] of this act, and in addition thereto, the fact that it was at the time of such default, and still is engaged in active business under its charter.

**Sec. 8. Expense of publication; how paid.** The expenses of the publication hereinbefore provided for shall be paid from the appropriation for printing, upon bills properly certified by the commissioners of state contracts, and the auditor of public accounts is hereby authorized and directed to draw his warrant upon the state treasurer for the amount so certified, and the treasurer shall pay the same out of the amount appropriated for printing.

**Sec. 9. Repeal.** That an act entitled, "An act requiring corporations to make annual report to the secretary of state, and providing for the cancellation of articles of incorporation for failure to do so," approved April 21, 1899, in force July 1, 1899, be, and the same is hereby, repealed.

---

## **Laws, 1872. An Act to provide for the Changing of Names, for Changing the Places of Business, for Increasing or Decreasing the Capital Stock, for Increasing or Decreasing the Number of Directors, for Enlarging or Changing the Objects, for which such Corporations were formed, and for the Consolidation of Incorporated Companies (March 26, 1872).<sup>1)</sup>**

---

**Sec. 1. Meeting of stockholders for. Restriction.** That whenever the board of directors, managers, or trustees, of any corporation existing by virtue of any general or special law of this state, or any corporation hereafter organized by virtue of any law of this state, may desire to change the name, to change the place of business, to enlarge or change the object for which such corporation was formed, to increase or decrease the capital stock, to change the number of shares of capital stock, to increase and decrease the par value of shares of capital stock, to increase or decrease the number of directors, managers, or trustees, or to consolidate said corporation with any other corporations now existing or which may hereafter be organized, they may call a special meeting of the stockholders of such corporation; or if the same has no stockholders, of the members or trustees, for the purpose of submitting to a vote of such stockholders, members, or trustees, the question of such change of name, change of place of business, enlargement or change of the object for which such corporation was formed, increase or decrease of capital stock, change of number of shares of capital stock, increase or decrease of number of directors, managers, or trustees, increase or decrease of capital stock, to increase or decrease the par value of shares of capital stock, or to consolidate with some other corporations, as the case may be; and further, that eleemosynary or religious corporations for educational purposes, acting under the general law or by virtue of special charter, are authorized to change the time and manner of electing the trustees, and to allow the alumni of said corporations to vote in the election of the trustees or a part thereof: Provided, that in changing the name of any other corporation, under the provisions hereof, no name shall be assumed or adopted by any corporation similar to or liable to be mistaken for the name of any other corporation organized under the laws of this state, without the consent of such other corporation; and that in no case shall the capital stock be diminished to the prejudice of the creditors of such corporation: And, provided further, that no corporation shall, by virtue hereof, change its place of business from any town, county, or municipality where such town, county, or municipality, or any of the inhabitants thereof, or any person or persons interested therein, shall have donated or in any manner contributed any money or other valuable thing to induce such corporation

---

<sup>1)</sup> As amended by Laws, 1889, p. 95.



to locate in such town, county, or municipality: And, provided further, that the provisions of this act in reference to the consolidation of corporations, shall only apply to corporations of the same kind and engaged in the same general business and carrying on their business in the same vicinity, and that no more than two corporations now existing shall be consolidated into one under the provisions hereof, except in the cases of corporations other than those conducted for profit: And provided further, than no alteration or change shall be made by virtue of this section to embrace any object that might not have been lawfully embraced in the statement and license issued before the organization of such corporation, as provided in section 2 of an act entitled, "And act concerning corporations", approved April 10, 1872, and in force July 1, 1872.

**Sec. 2. Notice of meeting.** Such special meeting shall be called by delivering personally or depositing in the postoffice at least thirty days before the time fixed for such meeting, a notice, properly addressed to each stockholder, signed by a majority of said directors, managers, or trustees, stating the time, place, and object of such meeting. A general notice of the time, place, and object of such meeting shall also be published for three successive weeks, in some newspaper printed in or nearest the county in which the principal business office of said corporation is located.

**Sec. 3. Manner of voting; two-thirds necessary.** At any such meeting stockholders may vote in person or by proxy, each stockholder being entitled to one vote for each share of stock held by him; and votes representing two-thirds of all the stock of the corporation shall be necessary for the adoption of the proposed change of name, place of business, enlargement, or change of the object for which such corporation was formed, number of directors, managers, or trustees, amount of capital stock, or consolidation with some other company.

**Sec. 4. Certificate of votes filed; changes accomplished.** If, at any regular annual meeting, or at the time and place specified in said notice of a special meeting, called for that purpose, said propositions, or any of them, be submitted to a vote, and if it shall appear that two-thirds of all the votes represented by the whole stock of such corporation are in favor of the propositions or of any of them, so submitted, a certificate thereof, verified by the affidavit of the president and under seal of said corporation, shall be filed in the office of the secretary of state, and a like certificate filed for record in the office of the recorder of deeds of the county where the principal business office of such corporation is located. And upon the filing of said certificate the changes proposed and voted for at such meeting as to name, place of business, enlargement, or change of the object for which such corporation was formed, increase or decrease of capital stock, increase or decrease of the numbers of directors, managers, or trustees, or consolidation with some other company, shall be, and are hereby declared accomplished, in accordance with said vote of the stockholders: And provided further, that any corporation, other than corporations for manufacturing purposes, availing itself of, or accepting the benefits of, or formed under this act (except the mere change of name), shall be subject to the general laws of this state now in force, or which may hereafter be passed, regulating corporations of like character.

**Sec. 5. Notice of change.** Such corporations shall, upon the filing of said certificate, cause to be published in some newspaper in or nearest the county in which their principal office is located, a notice of such changes of organization, for three successive weeks.

**Sec. 6. Act extended to corporations other than stock.** Corporations not being stock companies, may avail themselves of all the privileges and provisions of this act, by a majority vote of the members of such corporation who may be present at a meeting called for any of the purposes included in this act.

**Sec. 7. Rights reserved.** Such change of name, place of business, enlargement, or change of object for which such corporation was formed, increase or decrease of capital stock, increase or decrease of number of directors, managers, or trustees, or consolidation of one corporation with another, shall not affect suits pending in which such corporation or corporations shall be parties, nor shall such changes affect causes of action, nor the rights of persons in any particular; nor shall suits brought against such corporation by its former name be abated for that cause.

But cp. Laws, 1867, p. 80, § 1, p. 202, post.



**Sec. 8. Consolidation of railroads; notice.** Whenever any railroad corporation shall desire to consolidate with any other railroad corporation by virtue of the provisions of this act, a notice, as provided by section two of this act, shall be given at least sixty days before the time fixed for such meeting, and a general notice as provided by said section two, shall be published for nine successive weeks: Provided, that railroad corporations shall not consolidate their stock, property or franchises with any other railroad corporation owning a parallel or competing line.

**Sec. 9. Emergency.** Whereas, a large number of corporations in this state desire to change their names, and in other respects to comply with the terms of this act, whereby an emergency has arisen as a reason why this act should take effect forthwith; therefore, this act shall take effect and be in force from and after its passage.

---

**Laws, 1877, p. 67. An Act authorizing the Changing of the Number of Directors of Incorporated Companies in certain Cases (May 22, 1877).**

---

**Sec. 1. Meeting of stockholders for change.** That whenever the stockholders holding a majority of the stock of any corporation existing by virtue of any general or special law of this state, or any corporation hereafter organized by virtue of any law of this state may desire to change the number of its directors, managers, or trustees, from an even number to an odd number, they may call a special meeting of the stockholders of such corporation for the purpose of submitting to a vote of the stockholders of such corporation the question of such change of directors, managers, or trustees, from an even to an odd number: Provided, that the number of directors, managers, or trustees shall, in no case, after such change, be less than five nor more than eleven.

**Sec. 2. Special meetings; notice.** Such special meetings shall be called by the president upon the written application of the stockholders of such corporation owning a majority of the stock, by delivering personally, or depositing in the post-office at least thirty days before the time fixed for such meeting, a notice, properly addressed to each stockholder signed by the president, stating the time, place, and object of such meeting. A general notice of the time, place, and object of such meeting shall also be published for three successive weeks in some newspaper printed in or nearest to the county in which the principal business office of said corporation is located.

**Sec. 3. Manner of voting.** At any such meeting, stockholders may vote in person or by proxy, each stockholder being entitled to one vote for each share of stock held by him, and votes representing a majority of all the stock of the corporation shall be necessary for the purpose of changing the number of the directors, managers, or trustees, from an even to an odd number.

**Sec. 4. Certificates of votes filed; changes accomplished.** If at any regular annual meeting, or at the time and place specified in such notice of a special meeting called for that purpose, said proposition to change the number of directors, managers, or trustees from an even to an odd number, be submitted to vote, and if it shall appear that a majority of all the votes represented by the whole stock of such corporation are in favor of such change, a certificate thereof, verified by the affidavit of the president, and under the seal of said corporation, shall be filed in the office of the secretary of state, and a like certificate filed for record in the office of the recorder of deeds of the county wherein the principal business office of such corporation is located; and upon the filing of such certificate, the number of directors, managers, or trustees shall be, and is hereby declared to be, changed from an even number to an odd number, in accordance with such vote of the stockholders as aforesaid.

**Sec. 5. Repeal.** All acts and parts of acts inconsistent with this act are hereby repealed.

**Sec. 6. Emergency.** Whereas, a large number of corporations in this state desire to change the number of their directors, managers, and trustees from an even number to an odd number, an emergency therefore exists, and this act shall take effect and be in force from and after its passage.

---

**Laws, 1867, p. 80. An Act in Relation to the Consolidation of Incorporated Companies.**

**Sec. 1. Consolidated company liable for debts of original companies.** In all cases when any company or corporation, chartered or organized under the laws of this state, shall consolidate its property, stock, or franchises with any other company or companies, such consolidated company shall be liable for all debts or liabilities of each company included in said consolidated company, existing or accrued prior to such consolidation; and actions may be brought or maintained, and recovery had therefor, against such consolidated company.

But cp. Laws, 1873, § 7, as amended, p. 200, ante.

**Laws, 1895, p. 135. An Act to amend an Act entitled, "An act concerning Corporations," approved April 18, 1872, in force July 1, 1872, by providing for the Voluntary Dissolution of Corporations organized or hereafter organized upon the Stock Plan thereunder, by adding thereto four Sections to be numbered sections 50, 51, 52 and 53 respectively (June 17, 1895).**

**Sec. 1. Amends acts of 1872 by adding 4 new sections.** That an act entitled, "An act concerning corporations", approved April 18, 1872, in force July 1, 1872, be and the same is hereby amended so as to provide for the voluntary dissolution of corporations organized or hereafter organized upon the stock plan thereunder, by adding thereto the following sections, to be numbered section 50, section 51, section 52, and section 53, respectively:

**Sec. 50. Dissolution, submission of to stockholders.** Whenever two-thirds of the stockholders of any corporation organized or hereafter organized under the provisions of this act upon the stock plan may desire to abandon the corporate enterprise, surrender their charter, franchises and corporate name, and dissolve the corporation, it shall be the duty of the board of directors or managers thereof to submit the question of such dissolution to a vote of the stockholders at any annual or a special meeting of such stockholders to be called and held as herein provided.

**Sec. 51. Notice of meeting.** Such special meeting shall be called by delivering personally or depositing in the postoffice at least thirty days before the time fixed for such meeting a notice properly addressed to each stockholder signed by a majority of said directors or managers, stating the time, place, and object of said meeting, and a general notice of the time, place, and object of such meeting shall also be published for three successive weeks in some newspaper published in the county wherein the principal office of said corporation is located.

**Sec. 52. Vote; record.** At such meeting stockholders shall vote in person, each stockholder being entitled to one vote for each share of stock held by him, and votes represented by at least two-thirds of the whole capital stock of such corporation shall be necessary to effect a dissolution thereof, and if at any such meeting said stockholders shall in the manner herein provided agree to dissolve said corporation, they shall cause a complete record of all proceedings taken with respect thereto, reciting therein the adoption of a resolution to that effect, which shall also show that the corporate debts have been fully paid, the corporate liabilities completely discharged, and the corporate assets and property distributed among all the persons entitled thereto, to be made and signed by the president and the adoption thereof and recitals therein verified by his sworn affidavit, and attested by the secretary under his signature and the corporate seal. Said record shall be filed in the office of the recorder of deeds of the county wherein the principal office of such corporation is located and by him recorded and a notice of such dissolution published for three successive weeks in any newspaper published within such county, and within three months after such dissolution shall have been so agreed upon, the record aforesaid, bearing thereon the certificate of recordation executed by the recorder of deeds of the proper county, shall be filed in the office of the secretary of state.

**Sec. 53. When dissolution recognized.** The provisions of this act having been fully complied with, said corporation shall be deemed and taken to be dissolved in all courts and places whatsoever, and from and after any such dissolution hereunder, it shall be lawful for the secretary of state to issue a license to any person or persons to incorporate under the name or names previously used by such corporation at any time after the dissolution thereof. Provided, that a majority of the stockholders in number and amount of any such corporation enjoying such name shall have the exclusive privilege of becoming incorporated under the same name at any time within the said thirty days according to the provisions of the act to which this is an amendment.

---

**Laws, 1905, p. 124. An Act entitled, "An act to regulate the Admission of Foreign Corporations for Profit, to do Business in the State of Illinois" (May 18, 1905).**

---

**Sec. 1. Foreign corporations for profit subject to this act.** That before any foreign corporation for profit shall be permitted or allowed to transact any business or exercise any of its corporate powers in the state of Illinois, other than insurance companies, building and loan companies, and surety companies, they shall be required to comply with the provisions of this act and shall be subject to all of the regulations prescribed herein, as well as all other regulations, limitations, and restrictions applying to corporations of like character organized under the laws of this state.

**Sec. 2. Application to secretary of state. Contents of application. Certificate of authority to do business.** When any corporation organized under the laws of any foreign state or country, for the transaction of business for profit, desires admission into the state of Illinois, for the purpose of transacting business or exercising its corporate powers or franchise, it shall make application to the secretary of state, signed and sworn to by the president and secretary, stating what business such corporation proposes to pursue under its charter, the amount of capital stock of such corporation, whether it is transacting or it is intended that it shall transact business in any other state or country, the proportion of its business intended to be carried on in the state of Illinois, the amount paid in upon its capital stock, what property and assets and an estimate of the value thereof, will be employed in the business of said corporation in the state of Illinois, if any of its capital subscribed has not been paid in what disposition is to be made thereof, the names of the president, secretary, and directors of said corporation and their residences, where its principal office in Illinois will be located and the name and address of some attorney in fact, upon whom service can be had in all suits commenced in this state and, if required by the secretary of state, the names and residences of all stockholders in said corporation as shown by its records, and such corporation shall file with the secretary of state, copy of its charter or articles of incorporation, or in case such corporation is incorporated merely by a certificate then a copy of its certificate of incorporation, duly certified and authenticated by the officer who issued the original, or by the recorder or registrar of the office in which said original charter, articles, or certificates may have been recorded.

The secretary of state shall have power to prescribe the form of such application and may, in addition thereto, propound such interrogatory or interrogatories to the applicants respecting the character of business in which said corporation proposes to engage, the amount of its capital stock, the proportion of its business that it is intended shall be carried on in this state, and the proportion and location of its business in other states or countries, and such interrogatories shall be answered under oath and the interrogatories and answers thereto shall be filed with said application and with the certified copy of its charter and shall be and operate as a limitation upon the powers of said corporation to transact business in the state of Illinois.

The secretary of state, upon the admission of such foreign corporation to do business in the state of Illinois, shall issue a certified copy of all papers, including certified copy of the charter of said corporation, and shall state, in a certificate of authority to do business issued by him, the powers and object of said corporation which may be exercised in this state, not in conflict with the law or public policy

of this state, and no corporation shall, by the certificate of the secretary of state, be authorized to transact any business in this state for the transaction of which a corporation cannot be organized under the laws of this state, and no foreign corporation shall exercise any powers in this state not authorized by the provisions of its charter.

**Sec. 3. Affidavit as to principal business office in state. Reports from time to time as required. Provision as to real estate. Fees equal to fees of domestic corporations.** Every foreign corporation admitted to do business in the state of Illinois under the provisions of this act shall constantly keep on file in the office of the secretary of state, and an affidavit of the president and secretary, showing the location of its principal business office in the state of Illinois, and the name of some person who may be found at said office, for the purpose of accepting service upon said corporation, in all suits that may be commenced against it, and as often as said corporation shall change the location of its office, or its attorney for receiving and accepting service, a new affidavit shall be filed to take the place of all such affidavits previously filed by the officers of said corporation. Such corporation when admitted to do business in the state of Illinois, under this act shall be required to make such reports from time to time as are required to be made by similar corporations organized under the laws of this state and all regulations now in force or hereafter imposed upon domestic corporations, shall be alike observed and complied with by all foreign corporations doing business in this state.

No foreign corporation admitted to do business in this state under the provisions of this act shall hold any real estate except such as may be necessary for the proper carrying on of its legitimate business, nor be permitted to mortgage, pledge, or encumber its real or personal property situated in this state to the injury or exclusion of any citizen or corporation of this state who is creditor of such foreign corporation and no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other state shall take effect as against any citizen or corporation of this state until all of its liabilities due any person or corporation of this state at the time of recording such mortgage, shall have been fully paid and extinguished. Before any foreign corporation shall be authorized to do business in this state it shall be required to pay into the office of the secretary of state upon the proportion of its stock represented by its property and business in Illinois, fees equal to those required of similar corporations formed within and under the laws of this state.

**Sec. 4. Building and loan and other corporations. Deposits.** Nothing in this act shall be taken or construed to release from the operation of laws in force in this state, of foreign loan, building and loan, bond investment, surety, insurance, or other corporations which are required to make deposits and comply with regulations established by law for their government, or the government of domestic corporations of like character, nor shall this act be construed to authorize the admission to do business in this state of any corporation, the like of which may not be organized under some law of this state, nor to authorize the admission to do business in this state of any foreign loan, building and loan, bond investment, surety, or insurance company, nor shall this act be construed as a grant of power to any corporation admitted hereunder, but as a limitation upon interstate comity.

**Sec. 5. Interrogatories by secretary of state.** At any time the secretary of state may, in his discretion, prepare and propound to the president, secretary, any director or manager of any corporation doing business in this state under the provisions of this act, such interrogatories respecting the character of business being transacted by it, the location of its business, the names and residences of its directors and officers, and the amount of capital paid in, as well as what disposition has been made of capital stock subscribed for or authorized and not paid in, and such interrogatories shall be answered under oath by the officer or director to whom propounded, within five days after receipt thereof, and upon the failure or refusal of such officer or director to fully answer such interrogatories and file the same, with his answers, in the office of the secretary of state, within ten days after receiving the same, the secretary of state may revoke the authority of such corporation to do business in this state, by filing with the certified copy of the charter of such corporation a certificate of revocation, and by the publication thereof for one issue in some newspaper of general circulation in the state of Illinois, and thereafter such corporation shall not exercise any of its corporate powers or

franchises in the state of Illinois. When such interrogatories shall have been answered and filed with the answers thereto, in the office of the secretary of state, if thereby any violation of the law, or of the charter of said corporation, or any excess of its powers and authority to do business in this state is disclosed, a copy thereof, with such information, shall be immediately transmitted to the attorney-general of this state for his action.

**Sec. 6. Violation of act. Penalty.** Every foreign corporation amenable to the provisions of this act, which shall neglect or fail to comply with any of the provisions of the same as herein provided, shall be subject to a penalty of not less than one thousand dollars nor exceeding ten thousand dollars, to be recovered before any court of competent jurisdiction, and it is hereby made the duty of the secretary of state, as he may be advised, or may ascertain that any corporation is doing business in contravention of this act, to report such fact to the attorney-general of this state, and it shall be his duty and the duty of the state's attorney of the proper county to bring such actions at law as shall be necessary for the recovery of the penalties imposed hereby, and in addition to such penalty, if after this act shall take effect, any foreign corporation shall fail to comply herewith, no suit may be maintained either at law or in equity upon any claim, legal or equitable, whether arising out of contract or tort in any court in this state.

**Sec. 7. Certain laws not repealed by this act.** This act shall not be construed to repeal any law now in force regulating the admission into this state of any insurance, surety, building and loan, railroad, and telegraph corporation, but the provisions of this act shall be construed to be additional to any provisions regulating the admission of any such foreign corporations to do business in the state of Illinois.

**Sec. 8. Repeals act of 1897.** An act entitled, "An act to amend an act entitled, 'An act to require every foreign corporation doing business in this state to have a public office or place in this state at which to transact its business, subjecting it to certain conditions and requiring it to file its articles or charter of incorporation with the secretary of state and to pay certain taxes and fees thereon, approved May 26, 1897, in force July 1, 1897, (approved April 22, 1899, in force July 1, 1899),'" is hereby repealed and all acts and parts of acts in conflict herewith to the extent only of such conflict are hereby repealed.

**Sec. 9. Not applicable to railroad corporations.** This act shall not be applicable to, or in any manner affect, any corporation of another state which has acquired, or constructed, and is now operating, a railroad in the state of Illinois.

## **Laws, 1865, p. 24. An Act to authorize Corporations to act by Attorney (February 16, 1865).**

**Sec. 1. Corporations may act by attorney.** Any corporation, subsisting by the laws of other states or countries, may constitute and empower, by letter of attorney, any person or persons to act as its agent, in the state of Illinois, for the performance of such acts and doing such business as such corporation may be authorized to perform and do by the laws of the state of Illinois, and all instruments in writing, whether with or without seal, and all acts and things executed or done by such duly qualified agent, shall have the same force and effect, and be as valid and binding in law, as if executed and done, in due form of law, by the corporation for whom such agent may act; and any scrawl or seal written or affixed by such agent, so duly empowered, shall be deemed and considered, in such particular instance, as the corporate seal of the corporation for whom such agent is authorized as aforesaid to act: Provided, that this act shall not apply to railroad corporations.

## **Laws, 1887, p. 134. An Act to provide for the Incorporation of Co-operative Associations for Pecuniary Profit (May 31, 1887).**

**Sec. 1. Corporations may be organized as co-operative associations in any branch of industry.** Statement filed with secretary of state. License. Name. That whenever any number of persons, not less than three nor more than seven, may desire to become incorporated as a co-operative association for the purpose of prosecuting

any branch of industry, they shall make a statement to that effect under their hands and seals duly acknowledged before some officer in the manner provided for the acknowledgement of deeds, setting forth the name of the proposed corporation, its capital stock, its location and duration of the association, and the particular branch of industry which they intend to prosecute, which statement shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such association at such time and place as they may determine. No license shall be issued to two associations of the same name. The name of the city, village, or town in which the association may be located shall form no part of the name.

**Sec. 2. Subscription to capital stock.** No person shall be permitted to subscribe more nor less than one share to the capital stock of such association, nor shall any person be permitted in any manner to own or control more or less than one share in such association.

**Sec. 3. Organization may be completed when ten shares have been subscribed.** As soon as ten shares or more of the capital stock shall be subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting by-laws and transacting such other business as shall properly come before them. Notice thereof shall be given by depositing in the postoffice, properly addressed to each subscriber, at least ten days before the time fixed, a written or printed notice, stating the object, time and place of such meeting. Directors of associations organized under this act shall be elected, classified, and hold their office for such period of time as is provided by general law governing the election and classification of directors, trustees or managers of corporations.

**Sec. 4. Report of commissioners. Final certificate of organization. Record of certificate. Limitation.** The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the foregoing section, a copy of the subscription list, a copy of the by-laws adopted by the association, and the names of the directors elected and their respective terms of office, which report shall be sworn to by at least a majority of the commissioners, and shall be filed in the office of the secretary of state. The secretary shall thereupon issue a certificate of the complete organization of the association, making a part thereof a copy of all papers filed in his office in and about the organization of the corporation and duly authenticated under his hand and seal of state; and the same shall be recorded in the office of recorder of deeds in the county in which the principal office of such association is located. Upon the recording of said copy the association shall be deemed fully organized and may proceed to business. Unless such association shall be organized, and shall proceed to business within three years after the date of such license, the license to form such association shall be deemed revoked, and all proceedings thereunder shall be void.

**Sec. 5. Corporate powers.** Associations formed under this act shall be bodies corporate and politic for the period for which they are organized, may sue and be sued, may have a common seal which they may alter or renew at pleasure; may own, possess, and enjoy so much real and personal estate as shall be necessary for the transaction of their business, and may sell and dispose of the same when, in the opinion of the shareholders, it is not required for the uses of the association. They may borrow money at legal rates of interest, and pledge their property, both real and personal, to secure payment thereof, and may have and exercise all powers necessary and requisite to carry into effect the objects for which they may be formed.

**Sec. 6. Directors. Officers. By-laws.** The corporate powers shall be exercised by a board of directors, the number of which shall be fixed by the by-laws of the association, but the number may be increased or diminished by a majority of the shareholders at any properly called meeting. The officers of the association shall consist of a president, vice-president, secretary, and treasurer, to be elected by the shareholders at their annual meeting, as may be provided for in the by-laws of the association, who shall be elected at some regular meeting of the shareholders, as may be by by-laws provided. All by-laws of the association shall be adopted by the shareholders of the association.

**Sec. 7. Compensation of directors and officers. Duties of the secretary.** No officer or director shall receive any compensation for his services, except such as may be provided for in the by-laws of the association. It shall be the duty of the

secretary to be present at all meetings of the directors, and meetings of the shareholders, and faithfully make and preserve a record of all the proceedings of such meetings, which record shall be kept in a suitable place accessible to the inspection of any shareholder. He shall be the bookkeeper of the association, shall keep the accounts between the association and the individual shareholders, officers and agents thereof, and between the association and all parties with whom it may transact business, and such other duties as may be imposed upon him by the by-laws of the association.

**Sec. 8. Value of shares of stock payable in instalments. Forfeiture by non-payment. Re-issue of forfeited shares.** The shares of stock shall not be less than \$ 50 nor more than \$ 2,000 per share, and subscriptions therefor shall be made payable to the association and in instalments, and at such time or times as shall be determined by the shareholders, and action may be maintained in the name of the association to recover any instalment which shall remain due and unpaid for the period of 30 days after personal demand therefor; or, in cases where personal demand is not made, within 30 days after a written or printed notice has been deposited in the post office, properly directed to the postoffice address of the shareholder. The association may by by-laws prescribe other penalties for a failure to pay the installments that may from time to time become due, but no penalty working forfeiture of stock, or the amount paid thereon, shall be declared against any shareholder until the personal demand or written or printed notice above provided for shall have been made. Whenever a share of stock shall be forfeited, such share shall then become the property of the association and may be reissued to any person not already holding a share. But any proceeds received from such reissue, over and above the amount due on said share, by the association, shall be paid to the delinquent shareholder.

**Sec. 9. Assignment of stock. Liability. Vote for shares.** Every assignment or transfer of stock on which there remains any portion unpaid shall be recorded in the books of the association, and each shareholder shall be liable jointly with the association as well as severally for debts of the association to the extent of the amount that may be unpaid upon the share held by him. No assignor of a share shall be released from any such indebtedness by reason of any assignment of his share, but shall remain liable therefor jointly with the assignee and the association, or severally, until the stock is fully paid up. Every assignee of a share shall be liable for the amount unpaid thereon, the same as if he had been an original shareholder. No assignment shall be made to any person who already holds a share. No assignee or transferee of stock shall have any equitable or legal title in the same, or have the right to vote at any shareholders' meeting until such assignment or transfer shall be recorded as above provided for. On no question shall any shareholder have more than one vote.

**Sec. 10. Dividends based on product of shareholder. Piece and hour work. Appeals.** All dividends of profits made by any association incorporated under this act, shall be made in proportion to the amount of work performed, or product produced by each shareholder, and the association shall decide by by-law whether each shareholder's work or product shall be measured by the piece, or by the day or hour, or may classify the work, and measure some by the piece, some by the day, and some by the hour, as the exigencies of the case may demand. The association shall also provide by by-law how different kinds of piece work shall be rated, and how piece work shall be rated with day or hour work; shall provide how and by whom all kinds of work shall be received as properly executed from the shareholders for the association; shall provide the manner of giving out material to the different shareholders with which to work, and as to what position or location shall be assigned to each shareholder and by whom. Should any shareholder be dissatisfied with the decision upon his work, or with the material given him, or the position or location assigned him, he may appeal to the association at some regular meeting of the shareholders, whose decision shall be final. The association may provide by by-law how such appeal may be conducted. If in any kind of industry it should be impossible to assign all shareholders to equally advantageous positions or locations in work, the association may provide that shareholders shall periodically change places, or provide any other method of equalizing such matters in accordance with justice and equity.

**Sec. 11. Employment of labor other than shareholders prohibited. Substitutes.** It shall be unlawful for the association to hire any person to engage in the principal

business for which the association was organized to prosecute, it being the intent of this act that such labor shall be performed by the shareholders of the association to preserve the coöperative feature. It shall be lawful for any shareholder, in case he shall be detained from work by sickness of self or family, or very urgent business, to employ and furnish a competent substitute to perform such labor as would be assigned to the absent shareholder; and in such case the dividends shall be made to such shareholder the same as if he was present performing his labor himself. The association shall not be liable in any manner for the pay of such substitute.

**Sec. 12. Estate of shareholder. Substitute.** Whenever any shareholder may die, his share shall become a personal asset of his estate, and may be sold by his legal representative to any person, or may be awarded as a dividend of the estate to any person, competent to work the share, or to any devisee or legatee competent to work the share, not already a shareholder, and the same may be assigned or transferred in the same manner, and subject to the same regulations prescribed in section 9 of this act. Such legal representatives shall have the right to furnish a competent substitute to work the share of such deceased person, for the space of two years after the death of the deceased, unless the same shall have been sooner sold, or awarded as an estate, dividend, or devise or legacy as in this section provided, and during the time such substitute may be furnished, such legal representative, for the use of the estate, shall be entitled to vote, receive dividends and shall inure to all the benefits to which the deceased if living and working his share would have been entitled. Whenever such share shall become a part of the widow's allowance in the course of the administration of the estate of any deceased shareholder, she may furnish a competent substitute to work such share and shall be entitled to all privileges, dividends, etc., to which her husband would have been entitled, so long as she may desire to hold such share. She shall also have the privilege to sell the same whenever she may desire under the provisions of section 9 of this act.

**Sec. 13. Increase of membership.** Any association licensed to operate under this act may increase its membership of shareholders in such manner as it may by by-law provide not inconsistent with any of the provisions of this act.

**Sec. 14. Power reserved to the state.** The general assembly hereby reserves the power to prescribe such regulations and provisions governing any and all associations incorporated under this act as it may deem advisable, such regulations and provisions to be binding on associations incorporated at the time such regulations may be made as well as those thereafter incorporated.

**Sec. 15. Corporate existence continued after expiration of charter to close affairs. Dissolution shall not affect liability.** All associations organized under this act, whose powers may have expired by limitation or otherwise, shall continue their corporate capacity during the term of two years for the purpose only of collecting debts due the association, and selling and conveying the property and effects thereof, and during such time shall be capable of prosecuting and defending suits in law or equity. The dissolution for any cause whatever, of any association incorporated under this act, shall not take away or impair any remedy given against such association, its shareholders, officers, or agents, for any liabilities incurred previous to dissolution.

**Sec. 16. Books of account open to stockholders.** It shall be the duty of the directors of any association to cause to be kept at its principal office, or place of business, in this state, correct books of account of all its business, and every shareholder of such association shall have the right at all reasonable times by himself or his attorney, to examine the records and books of account of the association.

**Sec. 17. Failure to elect directors. Effect.** A failure to elect directors or officers, or both, on the day designated in the by-laws, or on the day for which notice was given for election, shall not have the effect of dissolving the association, but such election may be held at any time after proper notice.

**Sec. 18. Assessments for unpaid stock.** All assessments or instalments of the unpaid, or partly unpaid shares of stock of any association shall be levied by the directors in accordance with the provisions of the by-laws, but any assessment or instalment required to be paid shall be levied pro rata upon all the shares of stock.

**Sec. 19. Indebtedness in excess of capital stock.** If the indebtedness of any association shall exceed the amount of its capital stock, the directors and officers of such association assenting thereto shall be individually liable for such excess to the creditors of such association.



**Sec. 20. Payment of dividend by insolvent company.** If the directors or other officers or agents of any association shall declare and pay any dividend when such association is insolvent or any dividend the payment of which would diminish the amount of the capital stock, all directors, officers, and agents assenting thereto, shall be jointly and severally liable for all debts of such association then in existence and for all which shall thereafter be contracted, while they shall respectively continue in office.

**Sec. 21. Monthly meetings of directors.** The board of directors shall hold stated meetings not less frequent than once each month, as may be provided by the by-laws, and when such officers shall be present at any meeting, however called or notified, or shall sign a written consent on the record of such meeting, the acts of such meeting shall be as valid as if legally called and notified. All directors' meetings must be held within the limits of this state.

**Sec. 22. Monthly meetings of shareholders; quorum.** The shareholders of every association shall hold regular meetings not less frequently than once each month, as may be provided by the by-laws, and shall be presided over by the president of the association, or in his absence the vice president shall preside, and in his absence, the meeting may elect a president pro tempore, who shall preside during that meeting. It shall require a majority of all the shareholders entitled to vote, to be present, either in person or by written proxy, to constitute a quorum to transact business, but a smaller number may adjourn from time to time if they desire or until the next regular meeting.

**Sec. 23. By-laws; adoption; amendment and repeal.** No by-law shall be adopted, amended or repealed except by an affirmative vote of a majority of all the shareholders entitled to vote. Such vote shall be taken by a call of the roll of shareholders by the secretary of the meeting, noting the responses, whether aye or no, opposite their respective names, and which vote shall be spread upon the records of the proceedings. Votes upon other questions may be *viva voce*, showing of hands or a division of the house, unless three shareholders by themselves or proxy shall call for the ayes and noes, when in such case the roll shall be called, and the aye and no vote taken. If in calling the roll upon any question, less than a quorum votes, the pending question shall still remain as undecided until a quorum shall vote upon the question. Any proposition to amend, repeal, or enact any by-law must set forth the by-law as amended, or the one repealed, or the new one proposed, and be read at large in open meeting, and its consideration postponed until the next meeting, unless a majority of all the shareholders of the association shall on aye and no vote, be in favor of considering the question at once.

**Sec. 24. Forfeiture of charter; liability of members for indebtedness.** If any association, or its authorized agents, shall do or refrain from doing any act which shall subject it to a forfeiture of its charter or corporate powers, or shall allow any execution or decree of any court of record for a payment of money after demand made by the officer to be returned "no property found", or to remain unsatisfied thirty days after such demand or shall dissolve or cease doing business, leaving debts unpaid, suits in equity may be brought against all persons who were shareholders at the time, and liable in any way, for the debts of the association by joining the corporation in such suit, and after the assets of the corporation shall have been exhausted, each shareholder may be required to pay his pro rata share of such debts to the amount of his unpaid stock, or to any extent to which he may by law become individually liable.

**Sec. 25. Courts shall have power to dissolve associations. Receivers.** Courts of equity shall have full power, on good cause shown, to dissolve or close up, or take charge of the business of any association for the benefit of the creditors, to appoint a receiver therefor who shall have authority, by the name of the receiver of such association (giving the name), to sue in all courts and do all things necessary to close up its affairs, or to make the money charged against it and restore it back to the shareholders of the association, as may be commanded by the decree of court. Said receiver shall be a citizen of the state of Illinois, and shall enter into bonds, payable to the people of the state of Illinois, for the use of all parties interested, in such penalty and with such sureties as the court may, in the decree or order appointing the same, require.

**Sec. 26. Record evidence.** The certified copy of any articles of incorporation and changes thereon, under the great seal of the state of Illinois, shall be taken and received in all courts and places as prima facie evidence of the facts themselves.

**Laws, 1897, p. 176. An Act to enable Corporations in other States and Countries to lend Money in Illinois, to enforce their Securities and acquire Title to Real Estate as Security (May 24, 1897).**

**Sec. 1.** Foreign corporations may loan money on same terms, etc., in this state, as domestic corporations. That any corporation formed under the laws of any other state or country, and authorized by its charter to invest or loan money, may invest or loan money in this state. And any such corporation that may have invested or lent money as aforesaid, may have the same rights and powers for the recovery thereof, subject to the same penalties for usury, as private persons, citizens of this state; and when a sale is made under any judgment, decree, or power in a mortgage or deed, such corporation may purchase, in its corporate name, the property offered for sale, and become vested with the title wherever a natural person might do so in like cases: Provided, however, that all real estate so purchased by any such corporation, in satisfaction of any such liability or indebtedness, shall be offered at public auction, at least once every year, at the door of the court house of the county wherein the same may be situated, or on the premises so to be sold, after giving notice thereof for at least four consecutive weeks, in some newspaper of general circulation, published in said county; and if there be no such newspaper published therein, then in the nearest adjacent county where such newspaper is published, and said real estate shall be sold whenever the price offered for it is not less than the claim of such corporation, including all interest, costs, and other expenses: And, provided further, that in case such corporation shall not, within the period of five years after acquiring such title, sell such lands, either at public or private sale, as aforesaid, it shall be the duty of the state's attorney to proceed by information, in the name of the people of the state of Illinois, against such corporation, in the circuit court of the county within which such land, so neglected to be sold, shall be situated, and such court shall have jurisdiction to hear and determine the fact, and to order the sale of such land or real estate, at such time and place, subject to such rules as the court shall establish.

The court shall tax, as the fees of the state's attorney, such sum as shall be reasonable; and the proceeds of such sale, after deducting the said fees and costs of proceedings, shall be paid over to such corporation: And, provided further, That nothing in this act contained shall be so construed as to confer banking powers or privileges upon any such corporation.

---

**Louisiana.**

**Civil Code.**

---

**Title X. Of Corporations.**

**Chapter I. Of the Nature of Corporations, of their Use and Kinds.**

**Sec. 427.** A corporation is an intellectual body, created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues always the same, notwithstanding the change of the individuals which compose it, and which, for certain purposes, is considered as a natural person.

**Sec. 428.** The use of corporations is to contribute by the union and assistance of several persons, to the promotion of some object of general utility, although they be at the same time established for the advantage of those who are members of such corporations.

**Sec. 429.** Corporations are of two principal kinds: political and private. Political corporations are those which have principally for their object the administration of a portion of the State, and to whom a part of the powers of government is delegated to that effect. All others are private corporations.

**Sec. 430.** Corporations are also divided into civil and religious, and this distinction results, as well from the quality of the persons who generally compose these kinds of corporations, as from the difference of the object of their establishment.

Sec. 431. Civil corporations are those which relate to temporal police; such are the corporations of the cities, the companies for the advancement of commerce and agriculture, literary societies, colleges, or universities founded for the instruction of youth, and the like. Religious corporations are those whose establishment relates only to religion; such are the congregations of the different religious persuasions.

## Chapter II. Of the Rights and Privileges of Corporations, and of their Incapacities.

Sec. 432. Corporations must not only be authorized by the legislature, or established according to law, but a name must be given to them; and it is in that name they must sue or be sued, and do all their legal acts, although a slight alteration in this name be not important.

Sec. 433. Corporations legally established are substituted for persons, and their union which renders common to all those who compose them, their interests, their rights, and their privileges, is the reason why they are considered as one single whole. Hence, it follows that they may possess an estate, and have a common treasury for the purpose of depositing their money; that they are capable of receiving legacies and donations; that they may make valid contracts, obligate others, and obligate themselves towards others; exercise the rights which belong to them; manage their own affairs; appear in courts of justice, and even enact statutes and regulations for their own government, provided such statutes and regulations be not contrary to the laws of the political society of which they are members.

Sec. 434. The right of succession also is inherent to the nature of corporations; so that as long as they exist they transmit to their successors their rights and their property. The right of electing, in the manner prescribed by law, new members in the stead of those who have ceased to be members of the corporation, is a right impliedly attached to the constitution of every regularly established corporation.

Sec. 435. Corporations are intellectual beings, different and distinct from all the persons who compose them.

Sec. 436. The estate and rights of a corporation belong so completely to the body that none of the individuals who compose it can dispose of any part of them. In this respect the thing belonging to a body, is very different from a thing which is common to several individuals, as respects the share which every one has in the partnership which exists between them.

Sec. 437. According to the above rule, what is due to a corporation is not due to any of the individuals who compose it, and vice versa. A creditor of a corporation can not therefore compel any of the members thereof to pay what may be due to him by the corporation; he can demand his payment of the corporation only, through their president, syndic or attorney in fact, and he can seize no other effects but such as belong to the corporation, provided the debt has been contracted by the corporation through their president, syndic, or attorney in fact; for if all the individuals who compose the corporation have signed the deed personally, every one of them may be compelled to make payment, either for his individual portion or in solidum, when it has been stipulated expressly that the debt was contracted in solidum.

Sec. 438. From the circumstance that a corporation is an intellectual being, it follows that they cannot personally transact all that they have a right legally to do, as has been above observed; wherefore it becomes necessary for every corporation to appoint some of their members to whom they may intrust the direction and care of their affairs, under the name of mayor, president, syndics, directors, or others, according to the statutes and qualities of such corporation.

Sec. 439. The attorneys in fact or officers thus appointed by corporations for the direction and care of their affairs have their respective duties pointed out by their nomination, and exercise them according to the general regulations and particular statutes of the corporation of which they are the heads. These attorneys or officers, by contracting, bind the corporations to which they belong in such things as do not exceed the limits of the administration which is intrusted to them; their act is supposed to be the act of the corporation. If the powers of such attorneys or officers have not been expressly determined, they are regulated in the same manner as those of other agents.

Sec. 440. Corporations being intellectual persons, they are subject to various kinds of incapacities, some of which are inherent to their nature, others are established by law.

Sec. 441. A corporation cannot be administrator, guardian, or testamentary executor, nor fulfill any other office of personal trust. A corporation cannot be imprisoned, for its existence being ideal, nobody can arrest or confine it.

Sec. 442. In the same manner a corporation cannot bring an action for assault and battery or for other injuries of that nature; for a corporation can neither beat nor be beaten in its corporated capacity.

Sec. 443. A corporation cannot commit the crime of treason, or any other crime or offense, in its corporate capacity, although its members may be guilty of those crimes in their individual and respective capacities.

Sec. 444. In corporations the act of the majority is considered as the act of the whole.

Sec. 445. The statutes and regulations which corporations enact for their police and discipline, are obligatory upon all their respective members who are bound to obey them, provided such statutes contain nothing contrary to the laws, to public liberty, or to the interest of others.

Sec. 446. Corporations unauthorized by law or by an act of the legislature enjoy no public character, and can not appear in a court of justice, but in the individual name of all the members who compose it, and not as a political body; although these corporations may acquire and possess estates, and have common interests as well as other private societies.

### Chapter III. Of the Dissolution of Corporations.

Sec. 447. A corporation legally established may be dissolved: 1. By an act of the legislature, if they deem it necessary or convenient to the public interest; provided that when the act of incorporation imports a contract, on the faith of which individuals have advanced money or engaged their property, it can not be repealed without providing for the reimbursement of the advances made, or making full indemnity to such individuals; 2. By the forfeiture of their charter, when the corporation abuses its privileges, or refuses to accomplish the conditions on which such privileges were granted, in which case the corporation becomes extinct by the effect of the violation of the conditions of the act of incorporation.

### Revised Statutes.

Sec. 683. **Organization.** It shall be lawful for any number of persons, not less than six, on compliance with the provisions following, to form themselves into, and constitute a corporation for the following purposes, to wit: for the construction, working, and maintenance of railroads, canals, plank roads, bridges, ferries, transportation by pipe lines, or other works of public improvement, whether within or without the limits of this state; to effect fire, marine, river, life, and other insurance; to carry on manufactories of cotton, woolen, linen, silk, and hempen cloths, and cordage; to construct and carry on works to supply cities and towns with electricity, gas, water, or fuel oil; to convey water by canals or pipe lines for the purpose of irrigation; to compress cotton and to manufacture cotton seed oil and other products of cotton; to construct and carry on iron, brass, and copper foundries; to construct and maintain dry docks or floating docks for the building or repairing of ships and other vessels; to manufacture iron, copper, lead, and other metals, earthenware or stoneware, engines, cotton mills, cotton gins, machinery, paper, gunpowder, and agricultural implements; to establish companies for refining sugar, asphalt, or oil; to effect sea navigation by steam or other machine power; to create lines of telegraph and telephone, and to establish chemical laboratories and manufactories of all kinds; to open and work mines; to bore for oil; petroleum, gas, salt, or any other mineral or earthen products; and to establish pipe lines, and other means for the transportation of such products to market; to construct and maintain docks, steamships, and other vehicles for the transportation of freight and passengers; for constructing and maintaining works of drainage and sewerage and land reclamation; for the manufacture and transportation of lumber of all kinds, and for the development of the agricultural resources of the state, and for the promotion of immigration, and generally all works of public utility, improvement, and advantage. No such corporation shall engage in mercantile, or commission, brokerage, stock

jobbing, exchange, or banking business of any kind. [As amended by Act 154, 1902, p. 288.]

**Sec. 684. Power and authority.** Said corporations shall have power and authority: first, to have and enjoy succession by their corporate name for the period expressed in their act of incorporation, not exceeding ninety-nine years; second, to contract, sue and be sued, in their corporate name; third, to make and to use a corporate seal; fourth, to hold, receive, purchase, and convey, under their corporate name, property, both real and personal; fifth, to name and to appoint such managers, directors, and officers as their interest and convenience may require; sixth, to make and establish such by-laws for the proper management and regulation of the affairs of the corporation as may be necessary and proper; and any corporation established for drainage, sewerage, and land reclamation may, by contract with the owner of real property, duly recorded, have a privilege on said property for the price and value of the work done and facilities furnished. [As amended by Act 125, 1880, Sec. 2, p. 169.]

**Sec. 685. What charter shall contain.** Every charter of incorporation shall contain; first, the name and title of the corporation, and the place chosen for its domicile; second, a description of the purposes for which it is established, the nature of the business to be carried on, and the designation of the officer on whom citation may be served; third, the amount of the capital stock, the number of shares, the amount of each share and the time when and the manner in which payment on stock subscribed shall be made; fourth, the mode in which the elections of directors or managers shall be conducted; fifth, the mode of liquidation at the termination of the charter (Act 131, 1855, p. 182).

**Sec. 686. Charter to be recorded and published.** The charters of corporations, and the original subscriptions made for the purpose of organizing them, shall be recorded in the office of the recorder of mortgages, or other officer exercising his functions, at the place selected for the domicile of the corporation, and shall be published in a newspaper at its domicile once a week, at least for thirty days, but it shall not be necessary to publish the names of the subscribers; and any subscriber may present the charter and subscriptions for record with the recorder of mortgages.

**Sec. 687. Amendment of charter.** It shall be lawful for the stockholders of any corporation, at the general meeting convened for that purpose, to make any modification, additions, or changes in their act of incorporation, or to dissolve it with the assent of three-fourths of the stock represented at such meeting; any such modification, addition, change, or dissolution shall be recorded as required by the preceding section.

**Sec. 688. Forfeiture of charter.** They shall forfeit their charter for insolvency, evidenced by a return of no property found on execution; and in such case it shall be the duty of the district court, at the instance of any creditor, to decree such forfeiture, and to appoint a commissioner for effecting the liquidation, whose duty it shall be to convert all the assets of the company, including any unpaid balance due by stockholders on their shares, into cash, and to distribute the same under the direction of the court amongst the parties entitled thereto, in the same manner, as near as may be, as is done in cases of insolvency of individuals.

**Sec. 689. Consent of municipality to occupy streets, etc.** No railroad, plank-road, canal, or works of drainage, sewerage, and land reclamation shall be constructed through the streets of any incorporated city or town, without the consent of the municipal council thereof; and such council giving such consent to any corporation formed for the purpose of drainage, sewerage, and land reclamation may, in the interest of public health and cleanliness, pass all needful ordinances and police regulations to make effective the plan of sewerage and drainage it may so adopt, with reference to all houses and lands within the municipal limits. [As amended by Act 125, 1880, sec. 3, p. 169.]

**Sec. 690. Liability of stockholders.** No stockholder shall ever be held liable or responsible for the contract or faults of such corporation in any further sum than the unpaid balance due to the company on the shares owned by him; nor shall any mere informality in organization have the effect of rendering a charter null or of exposing a stockholder to any liability beyond the amount of his stock. (Act 131, 1855, p. 182.)

**Sec. 692. Power to borrow money.** That any railroad, plank-road, turnpike, canal, elevator, warehouse, or compress company or any corporation organized for the manufacture of cotton, woolen, or other yarns or cloth or for other manufacturing

purposes, or for drainage, sewerage, land reclamation and levee building, or any water works or electric lights and power company, or any bridge company or bridge and railway company, sugar mills, and refineries, saw mills, rice mills, cotton oil mills, and irrigating plants, established under the laws of this state, whether under and by special or general act, may borrow, from time to time, such sums of money as may be required for construction, repair, or acquisition of property, or franchises, and for this purpose may issue bonds or other obligations, secured by mortgage, or pledge, as the case may be, of the franchises and all the property, real and personal, and incomes, revenues, contributions, and receipts of said companies, and payable in such terms and such times and places as the board of directors, trustees, and managers or commissioners may direct or designate with power to sell, pledge, or otherwise dispose of said bonds on such terms as the companies respectively may direct or deem expedient. [As amended by Act 30, 1902, p. 37.]

**Sec. 693. Recording of mortgages. Conversion of bonds into stock.** A mortgage made by any company, as aforesaid, shall be binding in the several parishes through which a railroad may pass by the record of the mortgage in the parish where the principal office or domicile of the company may be located, and such mortgage need not be reinscribed to continue it in force. The president and directors of any company may confer on the holder of any bond or bonds issued for money for the use of said company the right to convert the principal due thereon into the stock of the said company at any time, not exceeding ten years from the date of said bond or bonds, under such regulations as the president and directors may adopt; Provided, That nothing in this act shall be so construed as to authorize an increase in the capital stock of any railroad company. (Act 194, 1856, p. 205.)

**Sec. 694. Copies of books, etc., as evidence.** Copies of all the books and records kept by the several railroad companies in this state, including extracts from the stock books and minutes of the proceedings of the directors, certified by the secretaries of said companies, under the seal of the company, shall be received in all the courts of this state as evidence in place of the originals.

**Sec. 725. Actions for damage or trespass.** In all cases where any corporation shall commit trespass or do anything for which an action for damage lies, it shall be liable to be sued in the parish where such damage is done or trespass committed. (Act 341, 1855, p. 485.)

**Sec. 731. Liquidation.** Whenever the charter of any corporation shall be decreed forfeited or annulled by the judgment of any court in this state, or whenever a pretended corporation or association of individuals usurping or assuming a corporate franchise is enjoined from acting as a corporation or illegally exercising a corporate franchise in this state by such judgment, or whenever a non-resident corporation or pretended corporation, or association of individuals, assuming to be a corporation, is enjoined from doing business or acting as a corporation in the state, all at the suit of the state, it shall be the duty of the governor on the recommendation of the attorney-general or district attorney instituting and conducting the suit or prosecution to appoint a liquidator to take charge of and liquidate the affairs of such corporation, pretended corporation, or association of individuals, as the case may be. In case of the death, resignation, or removal from the state of any such liquidator so appointed, the governor shall fill the vacancy. The liquidator so appointed by the governor shall be recognized and his bond fixed by the court rendering the judgment. In case no one will accept the appointment the governor may appoint the attorney-general or district attorney to act as liquidator, without bond. It shall be the duty of such liquidator to take possession of all the property and assets of every character in this state belonging to such corporation, pretended corporation, or association, and under the direction of the court to fully liquidate its affairs; to collect all debts due the same; to enforce all the obligations or liabilities of the members, shareholders, directors, or promoters thereof, whether as shareholders or partners corporate and individuals, and pay off the debts or ratably distribute the same among the creditors and holders of the obligations of such corporation, pretended corporation, or association, according to the rank and legal rights of the parties in interest and under the direction and according to the judgment of the court. In cases where the attorney-general represents the state he shall select the attorney of the liquidator. In cases where the district attorney represents the state he shall be the attorney of the liquidator. [As amended by Act 224, 1902, p. 453.]

**Sec. 740. Domicile of domestic corporations.** Every corporation organized, or which may hereafter be organized under and by virtue of any law of this state, shall establish its domicile at some place within the state of Louisiana, and not elsewhere. (Act 77, 1857, p. 61.)

**Sec. 741. Meetings of corporations must be held at domicile.** Every such corporation shall, from and after the passage of this act, hold all its meetings for the transaction of business appertaining to its corporate purposes or capacity whether of its stockholders at large, for election of officers, or other purposes, or of its directors, managers, trustees, or other officers charged with the direction of its affairs, at the place of domicile of said corporation; and any such meeting held elsewhere, and any business transacted, at any meeting held elsewhere shall be unlawful and of no effect. Provided, that this shall not apply to incorporated associations of pilots, scientists, literary, religious, charitable, and fraternal associations. [As amended by Act No. 63, 1910.]

---

### Statutes.

#### **Act 111, 1882, p. 162. An Act to provide for the Formation of Corporations for certain Purposes, and limiting the Capital of the same.**

---

**Sec. 1.** It shall be lawful for any number of persons not less than three, upon complying with the provisions and subject to the restrictions of the laws of this state governing corporations in general, to form themselves into and constitute a corporation, for the purpose of carrying on any mechanical, mining, or manufacturing business, except that of distilling or manufacturing intoxicating liquors, with a capital not less than five thousand nor more than one million dollars.

---

#### **Act 36, 1888, p. 27. An Act to provide for the Formation of Corporations for certain Purposes, limiting the Capital of the Same, and the Liability of the Stockholders thereof.**

---

**Sec. 1. Organization.** It shall be lawful for any number of persons, not less than three, upon complying with the provisions of the laws of this state governing corporations in general, to form themselves into and constitute a corporation for the purpose of carrying on any lawful business or enterprise, not otherwise specially provided for, and not inconsistent with the constitution and laws of this state; provided that no such corporation shall engage in stock-jobbing business of any kind; the corporations herein provided for to have a capital stock of not less than five thousand dollars.

**Sec. 2. Name.** The word "limited" shall be the last word of the name of every corporation formed under the provisions of this act; and every such corporation shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the corporation is carried on, in a conspicuous position, in letters easily legible, and shall have its full name mentioned in legible characters in all notices, advertisements, and other official publications of such corporations, and in all bills of exchange, promissory notes, checks, orders for money, bills of lading, invoices, receipts, letters, and other writings used in the transaction of business of the corporation; provided, that the omission of the word "limited", in the use of the name of the corporation shall render each and every person participant in such omission, or knowingly acquiescing therein, liable for any indebtedness, damage, or liability arising therefrom.

**Sec. 3. Liability of stockholders.** No stockholder of such corporation shall ever be held liable or responsible for the contracts or faults of such corporation in any further sum than the unpaid balance due to the company on the shares owned by him; nor shall any mere informality in organization have the effect of rendering a charter null or of exposing a stockholder to any liability beyond the amount of his stock.

**Sec. 4. Repeal.** All laws or parts of laws in conflict or inconsistent with the provisions of this act can be and the same are hereby repealed.

---

**Act 78, 1904, p. 191.** An Act providing for the Formation of Corporations in this State to carry on any lawful Business, except the Business of Insurance, of Banking, and Corporations entitled to exercise the Power of Eminent Domain.

**Sec. 1. Formation of corporations.** Any three or more persons may, on otherwise complying with the requirements of the laws of this state, form corporations to carry on under any name given in the charter any business specified in the charter that it would be lawful for any individual to carry on; that the charters of such corporations may provide that the corporations shall carry on any named business or different branches of business, whether related or not, provided such corporation shall have a subscribed capital of not less than three thousand dollars.

**Sec. 2. Validating corporations already organized.** Wherever parties have attempted to form a corporation and have executed, recorded, and published the charter, all contracts made and acts done by such corporation shall be treated as the contracts and acts of valid corporations so far as affects the rights and obligations of the corporation and its shareholders, reserving, however, to the state the right to take such proceedings as may be authorized by law to enjoin or dissolve the said corporations if informal, or to compel the compliance by them with the requirements of the law in the formation of corporations.

See Act 120, 1904, p. 281, § 1.

**Sec. 3. Act does not apply to insurance, banking, and corporations to exercise the power of eminent domain.** The provisions of this act shall not apply to the formation of corporations for conducting insurance or banking business, nor to the formation of corporations designed to carry on any business which shall entitle the corporation designed to exercise the power of eminent domain.

**Sec. 4. Repeal.** All laws and parts of laws in conflict with this act are hereby repealed.

**Act 120, 1904, p. 281.** An Act recognizing the Validity of Corporations heretofore attempted to be formed under the Laws of this State; and providing that the Validity of their Acts and Contracts shall be the same as if said Corporations had been always valid.

**Sec. 1. Recognizing the validity of corporations already organized, notwithstanding informalities in organization.** Whenever persons have undertaken to form a corporation under any of the existing laws of this state, and have executed, recorded in the mortgage office, and published their charters, the corporations so formed and subsequently doing business as corporations, are hereby recognized and declared to be now and hereafter, for the term stated in their charters, valid corporations, notwithstanding that the charters may have authorized the carrying on by one corporation of several branches of business, the carrying on of which by corporations is authorized by different statutes of this state, and notwithstanding irregularities in the proceedings and instruments of the incorporation.

See Act 78, 1904, p. 191, § 2.

**Sec. 2. Recognizing the validity of contracts by such corporations.** The validity of all contracts made and acts generally by said corporations, and the liability of shareholders therein, shall be in all respects the same as if the said corporations had been regularly and valid from the beginning.

**Act 149, 1898, p. 263.** An Act to provide the Manner in which Corporations may increase or decrease their Capital Stock, and to carry into Effect Article No. 267 of the Constitution of 1898.

**Sec. 1. Corporations may increase or decrease capital stock.** Any corporation now existing, which was created under the laws of this state, either by special act or under the general law, and any corporation that may be created under the



laws of this state, may increase or decrease its capital stock by complying with the provisions of this act, to any amount which may be deemed sufficient and proper for the purpose of the corporation.

**Sec. 2. Notice to be given to stockholders.** Whenever any corporation shall desire to increase or decrease its stock, the directors thereof shall publish a notice for thirty days preceding the time fixed for such meeting, that a meeting of the stockholders will be held at the office of the corporation for the purpose of deciding upon such an increase or decrease and shall also deposit a written or printed copy of such notice in the postoffice, prepaid, addressed to each stockholder at his usual place of residence, at least forty days before the date fixed for such meeting.

**Sec. 3. Vote.** The time and place of meeting, fixed and appointed as provided for in section two of this act, stockholders being present, either in person or by proxy, holding a larger amount not less than two-thirds value of the stock, the meeting shall be organized by the election of one of the stockholders as chairman thereof and another stockholder as secretary, a vote shall then be taken upon the proposed increase or decrease of the stock of the corporation. If, on canvassing the votes, it shall appear that persons holding or representing not less than two-thirds of the stock of the corporation, have voted in favor of the proposed increase or decrease of stock, a certificate of the proceedings shall be made, showing a compliance with the provisions of this act; the amount of capital stock of the corporation at the time the said vote was taken and the number of shares to which it was proposed and agreed to be increased or decreased, the amount and number of shares whose holders have voted in favor of said change, the amount and the number of shares whose holders have voted against said change and the whole amount of the debts and liabilities of said corporation; the said certificate shall be signed by the chairman and secretary of said meeting of stockholders, and shall be verified by their affidavits, and shall be filed in the office of the secretary of state, and when said certificate is so filed, the capital stock of said corporation shall be increased or decreased as herein set forth.

**Sec. 4. Repeal.** All laws and parts of laws in conflict herewith are hereby repealed, and that this act shall take effect from and after its passage.

---

## **Act 180, 1904, p. 370. An Act to establish a Law uniform with the Laws of other States relative to the Transfer of Stock in Corporations.**

**Sec. 1. Providing the manner of transfer of stock certificates of corporations.** The delivery of a stock certificate of a corporation to a bona fide purchaser or pledgee, for value, together with a written transfer of the same, or a written power of attorney to sell, assign, and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against all parties; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or to treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation, or a new certificate is issued to the person to whom it has been so transferred.

See Acts, 1910, c. 180, adopting the Uniform Stock Transfer Act, reprinted *supra*.

---

## **Act 241, 1908, p. 358. An Act making it unlawful for any Domestic Corporation, or any Foreign Corporation doing business in this State, to make and declare any Dividend on its Capital Stock, except from its actual Cash Surplus of Profits; or to make, withdraw or in any manner pay to the Stockholders, any Portion of the Company's Capital Stock, and providing Penalties for the Violation thereof.**

**Sec. 1. Making it unlawful for corporations to declare dividends out of capital stock.** It shall be unlawful for any domestic corporation, or for any foreign corporation doing business in this state, to make or declare any dividend on its capital stock except from its actual and bona fide cash surplus of profits; or to divide,

withdraw, or in any manner to pay the stockholders, any portion of the company's capital stock.

**Sec. 2. Violation forfeits right to do business.** If any of the provisions of this act be violated by a domestic corporation, such violation shall at once operate a forfeiture of its charter, and if the violation be by a foreign corporation doing business in this state, then such violation shall operate a forfeiture of its right to do and conduct any further business in this state; and the offending corporation, whether a domestic or a foreign corporation, shall likewise forfeit and pay to the state of Louisiana the sum of one thousand dollars.

**Sec. 3. How suits shall be brought.** All suits for the enforcement of the several forfeitures hereinabove provided for the violation of any of the provisions of this act shall be brought by the attorney-general in the name of the state of Louisiana, in any court of competent jurisdiction.

**Sec. 4. Commencement of act.** This act takes effect from and after its passage.

---

**Act 148, 1910, p. 226.** An Act to provide what shall, in all Applications for executory Process against Property mortgaged by a Corporation, constitute sufficient Proof of the Authority of the Officer or Agent of the Corporation to execute the Mortgage on its behalf; and to repeal all Laws or parts of Laws in conflict with this Act.

---

**Sec. 1. Resolution of board of directors of a corporation sufficient proof of authority, in applications for executory process. Right reserved to interested parties to attack such authority.** In all applications for executory process against property mortgaged by a corporation, a copy of the resolution of the board of directors authorizing the execution of the mortgage on behalf of the corporation, taken from the copy certified by the secretary and attached to the original act of mortgage, and certified by the notary before whom the act was passed, or from the mortgage or conveyance records, when the records show that the copy filed for record was certified by the secretary, and certified by the recorder, shall be sufficient evidence of the authority of the officer or agent to execute same, and no authentic or further proof of such authority, or of the existence of the corporation or the board of directors, or of the personnel or authority of the board to grant such authority to execute the mortgage, shall be necessary, provided that in all applications for executory process against property mortgaged by a corporation prior to the promulgation of this act, the fact that the mortgage was, on its face, executed by a person purporting to be an officer or agent of the corporation and to execute the mortgage on its behalf, shall be sufficient evidence of the authority of the purported officer or agent to execute same, and no authentic or further proof of such authority shall be necessary; provided, however, that the right of any party in interest to question or attack the authority of such purported officer or agent is not in any manner affected by the first proviso hereof.

**Sec. 2. Repeal.** All laws or parts of laws in conflict with this act be and they are hereby repealed.

---

**Act 158, 1874, p. 18, of Acts 1875.** An Act to authorize the Consolidation of Business or Manufacturing Corporations or Companies.

---

**Sec. 1. Power to consolidate.** Any two business and manufacturing corporations or companies now existing under general or special law, whose objects and business are in general of the same nature, may amalgamate, unite, and consolidate said corporations or companies and form one consolidated company, holding and enjoying all the rights, privileges, powers, franchises, and property belonging to each, and under such corporate name as they may adopt or agree upon. Such consolidation shall be made by agreement in writing by or under the authority of the board of directors, and the assent of the owners of at least three-fifths of the capital stock of each of said corporations or companies, and a certificate of the fact of such consolidation, with the name of the consolidated company, shall be filed and recorded in the office of the secretary of state; provided, no such consolidation shall in any

manner affect or impair the right of any creditors of either of said companies. In the agreement of consolidation the number of directors of the consolidated company shall be specified, and the capital stock may be any amount agreed upon by the companies or corporations, and set forth in the articles of consolidation.

**Sec. 2. Repeal.** All laws or parts of laws conflicting in any manner with the provisions of this act be, and the same are hereby repealed, and that this act shall take effect from and after its passage.

---

**Act 261, 1908, p. 380. An Act to provide the Manner in which Sheriffs and Constables throughout the State shall make Service of Citation, issued by the Courts upon Corporations and providing the Manner in which Returns to the Court issuing the Citation shall be made.**

---

**Sec. 1. Method of making service of citation upon corporations.** Service of citation issued by any court of this state upon a corporation shall be served by the sheriff or constable of said citation at the office of the corporation cited; the officer of court serving said citation to enquire first for the president of said corporation or the officer designated by the corporation's charter to receive citation upon whom the citation shall be served and if the president of said corporation or the officer designated by the corporation's charter upon whom citation shall be made be absent from the office, then the officer of the court making the service shall serve said citation upon any other officer of said corporation and if no officer of said corporation be present then the sheriff or constable shall deliver said citation to any male employe of said corporation, provided said employe be over the age of fourteen years.

**Sec. 2. Recital of sheriff's return.** The sheriff or constable making said service shall recite in his return to the court issuing said citation the manner in which the service was made and give the name of the person to whom the citation was handed.

**Sec. 3. Repeal.** All laws and parts of laws in conflict with this act be and they are hereby repealed.

---

**Act 124, 1908, p. 181. An Act to regulate the Practice, and to provide the Method, of enforcing the Execution of Judgments forfeiting or annulling the Charters of Corporations domiciled in this State.**

---

**Sec. 1. Court shall have jurisdiction of property from date of filing suit.** Whenever a suit is brought by the state of Louisiana to forfeit or annul the charter of any corporation, or pretended corporation, the court shall be considered to have jurisdiction of all the property, movable and immovable, belonging to such corporation from the date of filing the suit.

**Sec. 2. Court may order property to be sequestered, and administered by sheriff the same as a receiver.** The court in which the suit is filed may issue a judicial sequestration without bond, ordering the sheriff to sequester and take into his physical possession all of the property, movable and immovable, of such corporation, and if it is a going concern, the sheriff shall hold and administer such property as a receiver would, until the final determination of the suit but the defendant corporation shall have the right to bond, the sequestration pendente lite upon giving bond as provided by law in cases of sequestration. And should there be a final decree forfeiting or annulling the charter of such corporation, the sheriff shall then deliver the property, movable and immovable, to the liquidator appointed by the governor under section 731, of the revised statutes as amended by act no. 224 of the general assembly of the state of Louisiana, approved July 10, 1902.

**Sec. 3. Duty of court decreeing forfeiture of charter to issue judicial sequestration.** Whenever the district court renders a decree of forfeiture or annulment of a charter or franchise of any corporation at the suit of the state, it shall be the duty of the court, on the same day, to issue a writ of judicial sequestration commanding the sheriff to sequester, seize, and take into his possession all the property, movable and immovable, of the corporation, and to administer the same pending a rule for a new trial or an appeal. If the district court renders a

judgment for the defendant, and, on appeal the appellate court renders a judgment forfeiting the charter or franchise of any corporation, or annulling the charter, it shall be the duty of the district court immediately on being informed of such decree of the appellate court to issue a writ of judicial sequestration, on the court's own motion, directing the sheriff to seize and take into his possession and administer all the property movable and immovable of the corporation pending the application for a rehearing and until the judgment is final, and then, on a final decree against the corporation becoming executory, the sheriff shall turn over the property to the liquidator appointed by the governor under section 731 of the revised statutes, as amended by act no. 224 of the general assembly of the state, approved July 10, 1902, and should the final judgment be in favor of the corporation, then to the president and board of directors of such corporation.

**Sec. 4. All suits to be transferred to court ordering forfeiture of charter.** After the entry of a decree of forfeiture, all suits against the corporation shall be filed in the court, and division of the court where the forfeiture proceedings are pending, and all pending suits shall be transferred to that court.

---

### **Act 159, 1898, p. 312. An Act to authorize and regulate the Practice of appointing Receivers of Corporations under Articles 109 and 133 of the Constitution.**

---

**Sec. 1. Courts which may appoint receivers. Cases where receiver appointed.** The several district courts of this state, and the civil district court of the parish of Orleans, are empowered to appoint receivers to take charge of the property and business corporations domiciled in this state, and of the property of foreign corporations actually located herein, in the cases and under the conditions following, to-wit: 1. At the instance of any stockholder, when the corporation has been legally dissolved and the appointment of a receiver to liquidate the affairs of the corporation has been requested by a majority in amount of the stockholders, provided the right of stockholders to liquidate the affairs of the corporation in accordance with the charter shall not be affected thereby; 2. At the instance of any stockholder or creditor, when the directors or other officers of the corporation are jeopardizing the rights of stockholders or creditors by grossly mismanaging the business or by committing acts ultra vires, or by wasting, misusing, or misapplying the property or funds of the corporation; 3. At the instance of any stockholder or creditor when the property of the corporation is abandoned, or when by failure of the stockholders to elect, or the neglect or the refusal of the officers to serve, there is no one authorized to take charge of or conduct its affairs; 4. At the instance of any creditor having a final and executive judgment, suing in behalf of himself and for the benefit of any other creditors who may join therein, when the corporation is insolvent or when execution has issued on such judgment and has been returned nulla bona; 5. At the instance of any mortgage or privilege creditor when the property on which the mortgage or privilege rests is inadequate to satisfy such mortgage or privilege, and the directors or officers are appropriating the funds or property of the corporation to themselves or to the stockholders, or are wasting, misapplying, or misusing same to the injury of such mortgage or privilege creditor; 6. At the instance of any creditor when the property of the corporation has been seized under judicial process by fraud or collusion between the corporation, its officers, or stockholders and any creditor; 7. At the instance of any stockholder or creditor when the corporation has been adjudged not organized according to law, or pursuing any business, calling, or avocation contrary to law; 8. At the instance of a creditor when the board of directors of the corporation shall have declared by resolution that the corporation is unable to meet its obligations as they mature, and that a receiver is necessary to preserve and administer its assets for the benefit of all concerned; 9. At the instance of a mortgage or privilege creditor who has instituted proceedings to foreclose his mortgage or privilege, and the property upon which such mortgage or privilege rests is of such a character that its administration pending a sale is necessary or proper to fully preserve same and protect the rights of such creditor; 10. At the instance of any creditor residing in this state, of the property actually situated in this state of a corporation domiciled out of the state for any of the causes herein-

above mentioned; 11. At the instance of any stockholder when a majority of the stockholders are violating the charter rights of the minority and putting their interests in imminent danger.

**Sec. 2. Proceedings.** Application for appointment of a receiver shall be made by petition addressed to the district court of the domicile of the corporation, and if a foreign corporation, at its designated domicile if it has one, or if it has not designated a domicile then where any of its property is situated. Such petition shall be verified by the affidavit of the plaintiff or plaintiffs, or any of them, or by his or their attorney at law, or in fact, in case such plaintiff or plaintiffs are absent from the state, the court shall cause a copy of the petition together with an order to be served on the corporation requiring it to show cause on a day fixed (not less than ten days from the date of such order, unless circumstances shown require in the judgment of the court a shorter delay) and such application shall be heard and determined by the court in a summary manner in term time or vacation, and without the intervention of a jury.

**Sec. 3. Court may issue injunction.** Pending the hearing and determination of such application the court may, in its discretion, and on the plaintiff giving bond in a sum to be fixed by the court, restrain from injunction the corporation, its officers, stockholders, and agents from disposing of its property or changing the status of its affairs to the injury of the plaintiff; or staying proceedings by other persons against its property.

**Sec. 4. Appeals.** Any person or persons who by affidavit appear to be interested, in giving bond in a sum to be fixed by the court, may appeal in the face of the record from any order appointing, or refusing to appoint a receiver, granting, or refusing to grant an injunction as aforesaid; such an appeal when perfected shall have the effect of suspending the functions of such receiver, except to perform such administrative acts as may be necessary for the preservation of the property; provided, that such appeal must be taken and perfected within ten days from the entry of the order appointing or refusing to appoint a receiver, or granting or refusing to grant an injunction. Such appeal shall be returnable in ten days from the date of such order, and shall be tried by preference in the appellate court. Any interested party may apply within thirty days after the entry of the order of appointment of a receiver to vacate same on legal or just grounds, and may appeal from an adverse judgment, but such appeal shall not suspend the functions of said receiver in any way. The value of the property confided to the receiver shall determine the jurisdiction of the appellate court.

**Sec. 5. Authority which court may confer on receivers.** In the order appointing such receivers the court may, in its discretion, confer on the receiver such powers of administration as it may deem best for the interest of all parties, and may from time to time restrict or enlarge such powers, and may authorize any receiver of any corporation, in order to carry on the business of the corporation, to borrow or obtain money on certificates of indebtedness to be taxed as costs of court. The sum so obtained shall bear a first privilege on the property real or personal and the income of the corporation.

**Sec. 6. Bond and compensation of receiver.** The receiver so appointed shall give such bond for the faithful performance of his duties as the court may fix; and shall hold, administer, manage, and dispose of the property and income of such corporation in such manner as the court may decide to be for the interest of all parties. Such receiver shall receive the same compensation as syndics of insolvents, whenever the power is not conferred upon him to conduct the business of the corporation as a going concern; otherwise his compensation shall be fixed at such reasonable sum as the nature of the case justifies. In event that more than one receiver be appointed, the compensation allowed shall not be increased, but shall be divided as the court may determine.

**Sec. 7. Court may appoint experts, etc., for certain purposes.** The court may appoint such experts or examiners as may be necessary to whom may be referred for examination and report such matters of accounts and claims and matters of similar nature as the courts may determine.

**Sec. 8. Clerk of court shall keep receivership order book.** The clerk of the district court shall keep a book, to be known as the receivership order book, among the records of office, and shall immediately enter notice therein of the filings of every petition, motion, rule, or application made in behalf of any person (giving

title and number of cause, date of filing, name of petitioner, and the object of the petition, etc.,) and shall note on said book the time of filing petition, etc., and shall enter at large therein all orders or decrees made by the court in relation to any receivership. No order shall be granted by the court until ten days after entry of such notice in the order books, except an order to show cause, or when circumstances in the opinion of the court require otherwise, and same is so stated in the order or decree.

**Sec. 9. Statements which receivers shall file.** Receivers shall, when vested with powers of administration, file quarterly statements of their gestion, unless oftener required, showing accurately the condition of the business conducted by them; and when not so vested, they shall file annual accounts. Notice of the filing of such statements or accounts shall be entered in the order book. No statement shall be approved by the court until ten days after entry of such notice, and no account shall be homologated until after publication as provided in case of administrators of successions or syndics of insolvents.

**Sec. 10. When court may order sale of property, etc.** Where the court has appointed a receiver and it is made to appear that there is no reasonable ground to believe that the property of the corporation can be so administered as to pay its debts, and the possession thereof restored to the corporation, the court may on application of any party at interest, after ten days' notice of such application on the order book, if there be no opposition, or after hearing of same be opposed, order the sale of the property and the distribution of its assets in accordance with the rights of the parties in interest.

**Sec. 11. Repeal.** All laws or parts of laws in conflict herewith are hereby repealed.

---

### **Act 26, 1900, p. 32. An Act to authorize the Appointment of Receivers in all Cases of defunct Corporations.**

**Sec. 1. Appointment of receivers.** In all cases where any corporation possessed of property rights or credits has ceased to exist, or its charter has been repealed without providing for the liquidation of its affairs, the district court having jurisdiction of the place where said corporation was in existence shall have the right and power on the application of any party in interest, and where no individual is personally interested, and on the application of the attorney general, to appoint a receiver, to take charge of the property and effects of said corporation, to collect whatever debts, claims, or rights it may have, and to pay the debts of said corporation and finally liquidate the same.

**Sec. 2. Bond of receiver.** Said receiver shall give bond in such sum as the judge may fix, and he shall administer the affairs of said corporation as promptly as possible.

**Sec. 3. Repeal.** All laws or parts of laws in conflict with the foregoing are hereby repealed, and this act shall take effect from and after its passage.

---

### **Act 54, 1904, p. 133. An Act to carry into Effect Article 264 of the Constitution of 1898, in respect to Foreign Corporations doing Business in this State.**

**Sec. 1. Requiring foreign corporations to designate a domicile and appoint an agent in this state.** It shall be the duty of every foreign corporation doing business in this state to file in the office of the secretary of state a written declaration setting forth and containing the place or locality of its domicile, the place or places in the state where it is doing business, the place of its principal business establishment, and the name of its agent or agents or other officer in this state upon whom process may be served, provided, that no foreign corporation shall select as its agent or agents for service any person not residing in a parish where said corporation has an established business and, provided further, that service on said agent whether personal or domiciliary shall constitute a valid service on said foreign corporation.

**Sec. 2. Service made on secretary of state valid, where corporation has failed to appoint agent.** That whenever any such corporation shall do any business of any

nature whatever in this state without having complied with the requirements of section 1 (one) of this act, it may be sued for any legal cause of action in any parish of the state where it may do business, and service of process in such suit may be made upon the secretary of state the same and with the same validity as if such corporation had been personally served.

**Sec. 3. Repeal.** All laws and parts of laws in conflict or inconsistent with this act be and the same are hereby repealed.

---

**Act 182, 1904, p. 412. An Act to prohibit Corporations not domiciled in the State of Louisiana from forming any Agreement or Combination to prevent their legally authorized Representatives in Louisiana from accepting a greater Compensation than the Companies Parties to said Agreement pay said Agent, or Agents, and from forcing said Agents into refusing to accept a higher Compensation from Concerns not Parties to such Agreement.**

---

**Sec. 1. Prohibiting corporations from agreeing on compensation of agents.** It shall be unlawful for any corporation, not domiciled in the state of Louisiana, to enter into any combination or agreement with another corporation to prevent its legally authorized representatives in Louisiana from accepting a higher compensation than the corporations, parties to the aforesaid agreement, pay.

**Sec. 2. Penalty.** Any violation of this act shall be punished by revocation of the license of any and all corporations parties to the unlawful agreement hereinbefore mentioned for the year for which said license, or licenses, shall have been granted and for twelve months succeeding the year for which said license, or licenses, shall have been revoked.

---

## **Maine.**

### **Constitution.**

---

#### **Art. IV. Part III. Legislative Power.**

**Sec. 14. Corporations to be formed under general laws.** Corporations shall be formed under general laws and shall not be created by special acts of the legislature, except for municipal purposes, and in cases where the objects of the corporation cannot otherwise be attained; and, however formed, they shall forever be subject to the general laws of the state.

---

#### **R. S. 1903. c. 47. Corporations.**

---

**Sec. 1. Application.** This chapter applies to all corporations organized by special acts of the legislature or under the general laws of the state, except so far as it is inconsistent with such special acts or with public statutes, concerning particular classes of corporations.

**Sec. 2. Acts of incorporation may be altered or repealed.** Acts of incorporation, passed since March seventeen, eighteen hundred and thirty-one, may be amended, altered, or repealed by the legislature, as if express provision therefor were made in them, unless they contain an express limitation; but this section shall not deprive the courts of any power which they have at common law over a corporation or its officers.

**Sec. 3. Corporations chartered by special statute, shall prepare a certificate to be recorded.** Before commencing business, the president, treasurer and a majority of the directors of any corporation chartered by special act of the legislature, shall prepare a certificate setting forth the date of approval of its charter, the name and purposes of the corporation, the amount of capital stock, the amount already paid in, the par value of the shares, the names and residences of the owners, the name of the county where it is located, the number and names of the directors, and the

name and residence of the clerk, and shall sign and make oath to it. Such certificate shall be recorded in the registry of deeds in the county where its principal office is to be located, in a book kept for that purpose, and a copy thereof, certified by such register, shall be filed in the office of the secretary of state, who shall enter the date of filing thereon and on the original certificate to be kept by the corporation, and shall record said copy in a book kept for that purpose. From the time of filing such certificate in the secretary of state's office, the stockholders of said corporation, their successors and assigns, shall be a corporation.

**Sec. 4. Duties to be paid by corporations chartered by special statute.** The certificate mentioned in the preceding section shall not be received and filed by the secretary of state except upon the payment to him of the sum of fifteen dollars, if the capital stock does not exceed five thousand dollars; twenty-five dollars if the capital stock exceeds five thousand dollars and does not exceed ten thousand dollars; seventy-five dollars if the capital stock exceeds ten thousand dollars and does not exceed fifty thousand dollars; one hundred and twenty-five dollars if the capital stock exceeds fifty thousand dollars and does not exceed one hundred thousand dollars; sixty dollars upon every one hundred thousand dollars or fraction thereof in excess of one hundred thousand dollars, if the capital stock exceeds one hundred thousand dollars, which sum is to be paid by the secretary of state to the treasurer of state for the use of the state, provided, that the provisions of this section shall not apply to corporations chartered for charitable and benevolent purposes.

**Sec. 5. Duties upon filing certificates for banking, insurance, railroads, savings banks, trust, safe deposit, telegraph, telephone, electric or gas light, street railroad and water companies.** No certificate of organization of any corporation for banking, insurance, construction and operation of railroads, or aiding in the construction thereof, the business of trust companies, or corporations intended to derive a profit from the loan or use of money, safe deposit companies, renting of safes and burglar and fire proof vaults, telegraph and telephone companies, electric or gas light companies, street railroad companies, water companies, or any corporation authorized to exercise the right of eminent domain, shall be received and filed by the secretary of state except upon payment to him of twenty-five dollars, if the capital stock does not exceed five thousand dollars; fifty dollars if the capital stock exceeds five thousand dollars and does not exceed ten thousand dollars; one hundred dollars if the capital stock exceeds ten thousand dollars and does not exceed fifty thousand dollars; two hundred dollars if the capital stock exceeds fifty thousand dollars, and does not exceed one hundred thousand dollars; seventy-five dollars upon every one hundred thousand dollars or fraction thereof in excess of one hundred thousand dollars, if the capital stock exceeds one hundred thousand dollars, which sum is to be paid by the secretary of state to the treasurer of state for the use of the state.

This section has no application to railroad, telegraph, telephone, gas, or electrical companies organized under the provisions of section 6 below, to do business only in other states and jurisdictions, the state duties for which are provided in section 8 below.

*Organization of corporations under general law.*

**Sec. 6. How three or more persons may organize themselves into a corporation for certain enumerated purposes. Other corporations excepted. Corporations may be formed hereunder to exercise certain purposes in other states.** Three or more persons may associate themselves together by written articles of agreement, for the purpose of forming a corporation to carry on any lawful business anywhere, including corporations for manufacturing, mechanical, mining, or quarrying business, and also corporations whose purpose is the carriage of passengers or freight, or both, upon the high seas, or from port or ports in this state to a foreign port or ports, or to a port or ports in other states, or the carriage of freight or passengers, or both, upon any waters where such corporations may navigate; and excepting corporations for banking, insurance, the construction and operation of railroads or aiding in the construction thereof, and the business of savings banks, trust companies or corporations intended to derive profit from the loan or use of money, and safe deposit companies, including the renting of safes in burglar-proof and fire-proof vaults; but corporations may also be formed hereunder to exercise the following corporate purposes in other states and jurisdictions, namely: the construction and operation of railroads or aiding in the construction thereof, telegraph or telephone companies,



and gas or electrical companies, and in all such cases the articles of agreement and certificate of organization shall state that such business is to be carried on only in states and jurisdictions when and where permissible under the laws thereof, and such corporations heretofore organized for the transaction of such business in other states or jurisdictions, if otherwise legally organized and now existing, are hereby declared to be corporations under the laws of this state.

**Sec. 7. First meeting. Notice may be waived. Amount of capital stock, and officers.** Their first meeting shall be called by one or more of the signers of said articles, by giving notice thereof, stating the time, place, and purposes of the meeting to each signer, in writing, or by publishing it in some newspaper printed in the county at least fourteen days prior to the time appointed therefor. If all of the signers of said articles shall in writing waive notice and fix a time and place of such meeting, no notice or publication shall be necessary. At such meeting they may organize into a corporation, adopt a corporate name, define the purposes of the corporation, fix the amount of the capital stock, which shall not be less than one thousand dollars, divide it into shares, and elect not less than three directors, a president, a clerk, treasurer, and any other necessary officers, and may adopt a code of by-laws.

**Sec. 8. Certificate prepared by officers, examined by attorney general, and recorded in registry of deeds and secretary of state's office. Duties to be paid to the state.** Before commencing business, the president, treasurer and majority of the directors shall prepare a certificate setting forth the name and purposes of the corporation, the amount of capital stock, the amount already paid in, the par value of the shares, the names and residences of the owners, the name of the county where it is located, and the number and names of the directors, and the name and residence of the clerk, and shall sign and make oath to it; and after it has been examined by the attorney general, and been by him certified to be properly drawn and signed and to be conformable to the constitution and laws, it shall be recorded in the registry of deeds in the county where said corporation is located, in a book kept for that purpose, and within sixty days after the day of the meeting at which such corporation is organized, a copy thereof certified by such register shall be filed in the secretary of state's office, who shall enter the date of filing thereon, and on the original certificate to be kept by the corporation, and shall record said copy in a book kept for that purpose. Before said certificate is filed in the office of the secretary of state, when the amount of capital stock does not exceed ten thousand dollars, such corporation shall pay to the treasurer of state for the use of the state the sum of ten dollars; when the amount of the capital stock exceeds ten thousand dollars and does not exceed five hundred thousand dollars, it shall pay to the treasurer of state for the use of the state, the sum of fifty dollars; when the amount of the capital stock exceeds five hundred thousand dollars, it shall pay to the treasurer of state for the use of the state ten dollars for each one hundred thousand dollars of the capital stock; and the treasurer's receipt for said sum shall be filed with the secretary of state as a condition precedent, before he shall be authorized to receive said certificate for filing.

The duties of the attorney general under this section are now imposed on the assistant attorney general. Laws, 1905, c. 162.

**Sec. 9. Certificate filed in registry of deeds where corporation is located, deemed compliance.** Any corporation organized hereunder before March fifteen, eighteen hundred and ninety-three, which caused the certificate to be recorded in the registry of deeds of the county in which such corporation is described in said certificate to be located, shall be deemed to have complied with the requirements of the preceding section.

**Sec. 10. Upon filing certificate organization complete.** From the time of filing the copy of such certificate in the secretary of state's office, the signers of said articles and their successors and assigns shall be a corporation, the same as if incorporated by a special act, with all the rights and powers, and subject to all the duties, obligations and liabilities provided by this chapter.

#### *Meetings.*

**Sec. 11. First meeting, how called; organization valid, if made under any provision of this chapter.** The first meeting of any corporation chartered by special act of the legislature unless otherwise provided, shall be called by a notice signed by some person named in the act of incorporation, setting forth the time, place, and

purpose of the meeting, a copy of which shall be delivered to each member, or published in a newspaper in the county, if any, otherwise in the state paper, seven days before the meeting; but the organization of any existing corporation made in accordance with any provision of this chapter is valid.

**Sec. 12. Any meeting may be called by a justice, if no other legal mode.** When a meeting of any corporation cannot be otherwise called, three members of the corporation may make written application to a justice of the peace where it is established, if local, or if not, where it is desired to hold the meeting, who may issue his warrant to either of such members, directing him to call a meeting by giving the notice required in the preceding section. When the law requires a notice to be published in some newspaper, or posted in some public place, the justice shall designate in his warrant the newspaper or place.

**Sec. 13. Who may preside at meeting. Person presiding not responsible for error.** When a meeting is called by a justice of the peace, he, or the person to whom his warrant was directed, may call the meeting to order and preside therein, until a clerk is chosen and qualified, if there is no officer present whose duty it is to preside. The person presiding is not responsible for an error in judgment in receiving or rejecting the vote of a person claiming to be a member.

**Sec. 14. Officers hold over, when; officers elected on another day, acts of, legal. Proviso.** When a corporation fails to hold its annual meeting on the day appointed, or fails to elect officers at such meeting, the officers of the preceding year continue in the exercise of their duties, and their acts are legal, until other officers are chosen and qualified in their stead. When upon due notice given, officers are regularly elected on any other day than that of the annual meeting, they shall hold their offices and perform their duties as if chosen on that day, unless a majority of the corporate members file with the clerk, within six months after such election, written objections thereto, and their acts shall be considered legal, until others are chosen and qualified in their stead.

**Sec. 15. Objections to election on another day.** When such a notice is filed, the clerk shall call a meeting of the corporation, at such time and place as he appoints, and give the notice required for an annual meeting, stating in it the fact that objections have been filed, and the purpose of the meeting; and officers elected at such meeting shall hold their offices, and their acts shall be considered legal, until other officers are chosen and qualified in their stead.

**Sec. 16. Meeting when legal by consent.** When all the members of a corporation are present in person or by proxy at a meeting and sign a written consent on the record thereof, such meeting is legal.

**Sec. 17. Proxies and powers of attorney, and rights under them.** Shareholders may be represented by proxies granted not more than thirty days before the meeting which shall be named therein; they are not valid after a final adjournment thereof. They may be represented by a general power of attorney, produced at the meeting, until it is revoked. Shares hypothecated to the corporation shall not be represented. No person can give, by right of representation, a greater number of votes than is allowed to any one by the charter or by-laws.

**Sec. 18. Representation of pledged stock.** After the owner of stock in a corporation has transferred, mortgaged or in any way pledged the same to another for security merely, and it so appears in such transfer, mortgage or pledge, and on the books of the corporation, such owner continues to have the right to vote upon such stock at all meetings of the stockholders until his right of redemption ceases.

#### *Officers and their duties.*

**Sec. 19. Officers of corporation.** Corporations shall have a president, directors, clerk, treasurer and any other desirable officers. Such officers shall be chosen annually, and shall continue in office until others are chosen and qualified in their stead. There shall not be less than three directors, one of whom shall be by them elected president. Directors must be and remain stockholders, except that a member of another corporation, which owns stock and has a right to vote thereon, may be a director. The treasurer shall give bond for the faithful discharge of his duties, in such sum, and with such sureties, as are required. The clerk shall be sworn, and shall record all votes of the corporation in a book kept for that purpose; nothing herein shall prohibit corporations from providing by their by-laws for the division of their directors into classes and their election for a longer term than

one year. After the certificate of organization required by law is filed in the office of the secretary of state, directors of all corporations not charged with the performance of any public duty within the state may hold meetings without the state and there transact business and perform all corporate acts not expressly required by statute to be performed within the state. Directors of such corporations may act through committees whose powers shall be defined in the by-laws.

**Sec. 20. Clerk's office, books, etc., where kept. Records and stock book open to inspection and to be produced in court. Provisions do not apply to certain corporations.** All corporations, existing by virtue of the laws of this state, shall have a clerk who is a resident of this state, and shall keep, at some fixed place within the state, a clerk's office where shall be kept their records and a book showing a true and complete list of all stockholders, their residences and the amount of stock held by each; and such book, or a duly proved copy thereof, shall be competent evidence in any court of this state to prove who are stockholders in such corporation and the amount of stock held by each stockholder. Such records and stock book shall be open at all reasonable hours to the inspection of persons interested, who may take copies and minutes therefrom of such parts as concern their interests, and have them produced in court on trial of an action in which they are interested. The above provisions as to list of stockholders shall not apply to any corporation doing business in this state and having a treasurer's office at some fixed place in the state where a stock book is kept giving the names, residences and amount of stock of each stockholder.

**Sec. 21. Preventing use of records and books, punished.** Any officer or member of a corporation, who prevents access to and use of the records and books as provided in the preceding section, is liable for all damages occasioned thereby, in an action on the case.

**Sec. 22. Certificate of election of clerk. An attested copy evidence.** Whenever there is a change in the office of clerk of a corporation, the clerk shall, within twenty days after the acceptance of the office file a certificate of his election in the registry of deeds in the county or district where the corporation is located or, where it has a place of business or a general agent; and an attested copy of such certificate shall be sufficient evidence that he is clerk, for service of process upon the corporation, until another certificate has been filed.

**Sec. 23. Clerk of any corporation may resign at any time.** The clerk of any corporation may resign his office as clerk by filing his resignation with the register of deeds in the county where the certificate of his election was filed; if no such certificate of election was filed, then his resignation may be filed with the register of deeds in the county where such certificate of election, ought according to law to have been filed; said resignation shall take effect from and after the time of the receipt of the same by such register of deeds.

**Sec. 24. Officers to ascertain residences of stockholders. No dividends, unless residence is on books. Return of stock to assessors.** Cashiers of banks, treasurers of trust and banking and safe deposit companies, and clerks or treasurers of other corporations shall ascertain the residences of all stockholders in either; and no dividend shall be paid to any stockholder, whose residence, for the time being, is not entered on the books thereof; and the cashiers of banks, and clerks or treasurers of all corporations holding property liable to be taxed, shall, by the eighth day of April annually, return under oath, to the assessors of each town, in which any of its stockholders reside, the names of such stockholders, the amount of stock owned by them on the first day of such April, and the amount of stock paid into such corporations, and also the value of the real estate, vaults and safe deposit plant, owned by any bank, or trust and banking or safe deposit company which is taxed as other real estate is taxed in the town in which it is located and the amount for which it is valued by the assessors of such municipality for the year previous, and such return shall contain in the body thereof, or by note annexed thereto, an abstract of section thirty-two of chapter nine; and said cashiers of banks, treasurers of trust and banking and safe deposit companies, and clerks or treasurers of such other corporations shall make like returns to the assessors of the town where such bank, company or other corporation is located or transacts its ordinary business, of all the stock in such bank, company or other corporation not returned to the assessors of other towns in the state. Such returns shall be the basis of taxation on such property,

deducting the assessed value of the real estate, vaults and safe deposit plant of any bank, trust and banking or safe deposit company as herein provided.

This section does not impose the duty of making returns upon corporations whose assets and business are outside of Maine.

**Sec. 25. Cashiers to return list of stockholders to secretary of state.** Such cashiers shall, between the first day of November and the eighth day of December, annually, make return to the secretary of state of the names of all stockholders, their residences, the amount of stock owned by each and the whole amount of stock paid in on said first day of November. The secretary shall lay the same before the legislature within the first thirty days of the session.

**Sec. 26. Corporations shall annually file returns with secretary of state. Contents of returns.** Every corporation incorporated under the laws of this state, excepting religious, charitable, educational and benevolent corporations, and excepting such corporations as may be organized under chapter fifty-seven, and such corporations as are liable to a franchise tax other than the tax provided for in section eighteen of chapter eight, and such corporations as have been or may hereafter be excused from filing annual returns under the provisions of section thirty-one of this chapter, so long as their franchises remain unused, shall on or before the first day of June, annually, make a return to the secretary of state, signed by its president or treasurer, verified under oath, containing the names of its directors, president, treasurer and clerk, with the residence of each, the location of its principal office in this state, and the amount of its authorized capital stock; and for this purpose the secretary of state shall furnish blanks in proper form and safely keep in his office all such returns.

**Sec. 27. Deposit of return in post office sufficient.** A deposit of the return required in the three preceding sections in a post office, postage paid, properly directed, is a compliance therewith. For the neglect or refusal of its officer to make such return, the corporation forfeits five hundred dollars, to be recovered in an action of debt, to be prosecuted in the name of the state by the attorney-general.

**Sec. 28. Secretary of state to notify attorney-general of neglect of corporations to make returns. Costs in behalf of state.** Whenever any corporation or its officers neglect to make to the secretary of state any return required by law, the secretary of state shall forthwith notify the attorney-general, who shall proceed at once, by action of debt in the name of the state, to enforce the penalties therefor, and shall make itemized return thereof in his annual report. The secretary of state, on or before the first day of July, annually, shall furnish the attorney-general with a statement showing which of said corporations, if any, have failed to comply with the preceding section, with such other memoranda from his office as will aid the attorney-general in obtaining service upon such delinquent corporation. In addition to said penalties, the following costs shall be recovered in behalf of the state against said corporation, to wit: for the attorney general, for the writ, an attorney fee, and travel and attendance at court not exceeding two terms; and for the state, such other costs as are legally taxable in actions at law. Such action may be brought in any county.

**Sec. 29. Suits may be discontinued.** If within thirty days from the commencement of an action under section twenty-seven such corporation makes to the secretary of state the returns required by law, he shall forthwith notify the attorney general, who shall discontinue such suit upon payment of the costs already accrued.

**Sec. 30. Penalty for neglect to publish statement.** If any officer of a corporation, charged by law with the duty of making and causing to be published any statement in regard to such corporation, neglects to do so, such officer, in addition to penalties already provided, forfeits five hundred dollars to the prosecutor, to be recovered by action of debt, or action on the case.

No statements, except that specified in section 26 above, are required from corporations organized under the "general law," i. e. section 6 above.

**Sec. 31. Corporations ceasing to do business may be excused from filing annual returns.** The attorney general, upon application by any corporation, and satisfactory proof that it has ceased to transact business, shall file a certificate of the fact with the secretary of state, and shall give a duplicate certificate to the corporation; and thereupon be such corporation shall excused from filing annual returns with the secretary of state.

The exercise of the corporate franchises may be resumed, at any time, upon notification to the secretary of state. See note to sec. 8.

**Sec. 32. Dividends may be made; but not to reduce capital or debts due.** Dividends of profit may be made by the directors, but the capital or the debts due shall not thereby be reduced, until all debts due from the corporation are paid. Any officer or member, who votes or aids to make a dividend in violation hereof shall be fined not exceeding two thousand dollars, and imprisoned less than one year; and all sums received for such dividends may be recovered by any creditor of the corporation in an action on the case.

*Capital stock and transfer of shares.*

**Sec. 33. Capital fixed and divided. Names of owners and their shares, to be entered of record.** The capital of corporations incorporated by special act of the legislature shall be fixed within the limits of the charter and divided into shares; and the names of owners, and the number of shares owned by each, shall be entered of record at the first meeting. The capital may be subsequently increased to the amount allowed by the charter, by adding to the number of shares.

**Sec. 34. Transfer of shares, how made. What shall constitute a sufficient delivery.** When the capital of a corporation is divided into shares, and certificates thereof are issued, they may be transferred by indorsement and delivery. The delivery of a certificate of stock of a corporation to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title against all parties. Certificates of shares with the seal of the corporation affixed, shall be issued to those entitled to them by transfer or otherwise, signed by the president or vice-president, and by the cashier, clerk or treasurer. Neither shall sign blanks and leave them for use by the other, nor sign them without knowledge of the apparent title of the person to whom they are issued. In case of the absence or disability of either of said officers, the signature of a majority of the directors in his stead is sufficient.

**Sec. 35. Transfer shall not affect holder of record, until recorded.** No transfer shall affect the right of the corporation to pay any dividend due upon the stock, or to treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation or a new certificate is issued to the person to whom it has been so transferred.

**Sec. 36. May change par value of shares.** Any corporation organized under this chapter may change the par value of its shares at a meeting of the stockholders called for the purpose by a vote representing a majority of the stock issued, and a certificate thereof signed by the president or clerk shall be filed in the office of the secretary of state in the same manner as provided by law for changes in charter or certificate of organization.

**Sec. 37. Assessments may be made and shares sold, for neglect to pay.** Assessments, not exceeding the amount originally limited for a share, may be made on all shares, subscribed and not paid for, to be paid to the treasurer, in such installments and at such times as are ordered. If a stockholder neglects to pay such assessments on his shares for thirty days, the treasurer may sell at public auction a sufficient number of them to pay the same with incidental charges.

**Sec. 38. Notice of sale, how given; title, how transferred to purchaser.** The treasurer, before the sale, shall give notice of the time and place thereof, and of the amount due on each share, in a newspaper printed in the town, if any, if not, in the county where the office of the clerk of such corporation is established, otherwise in the state paper, three weeks successively; and the treasurer's certificate of the sale of such shares, recorded as other transfers, passes the title to the purchaser.

**Sec. 39. Certain corporations may increase capital and change number of directors. Secretary of state to be notified. Duties.** If the stockholders of any corporation created by special charter and not charged with the performance of any public duty, or organized under the general laws of the state, find that the amount of its capital stock is insufficient for the purposes for which said corporation is organized, or that the number of directors is inconvenient for the transaction of its business, the stockholders may by a vote representing a majority of the stock issued, increase the amount of its capital stock to any amount, and may change the number of directors in like manner, and the corporation shall file a certificate thereof with the secretary of state within ten days thereafter, and thereupon said vote shall take effect. When the capital stock is increased from ten thousand dollars or less

to not exceeding five hundred thousand dollars, the corporation shall pay to the treasurer of state for the use of the state the sum of forty dollars. When the capital stock is increased to any amount exceeding five hundred thousand dollars, it shall pay to the treasurer of state for the use of the state the sum of ten dollars for each one hundred thousand dollars of such increase, and the treasurer's receipt for the same shall be filed with the secretary of state before he shall be authorized to receive any certificate of any increase of capital stock.

**Sec. 40. Reduction of capital stock. Rights of creditors not prejudiced.** If the stockholders of any corporation organized under this chapter shall desire to decrease the amount of its capital stock the stockholders, at a meeting duly called for the purpose, or at any annual meeting, when notice shall have been given of such proposed action in the call therefor, may by a vote representing a majority of all the stock issued, decrease the amount of its capital stock to any amount desired, and the corporation shall give notice of such change to the secretary of state within ten days thereafter. And each stockholder shall, within three months after such meeting, surrender such a proportion of his stock as the amount of decrease shall bear to the amount of the capital stock before the decrease, so that each stockholder shall have the same proportion of the whole capital stock of the company as before the decrease. This section shall not affect or prejudice in any way the rights of creditors of such corporation existing at the time when the reduction of its capital stock authorized hereunder shall be consummated.

**Sec. 41. When capital of company is impaired, stock may be reduced. Par value of shares reduced proportionally.** Whenever the assets of a corporation have been so diminished by losses or depreciation of property, that its capital is impaired, such corporation, at any meeting of the stockholders legally called therefor, with the consent of not less than two-thirds in amount of all its outstanding stock, expressed at such meeting or at any adjournment thereof, may reduce such stock to the extent of such impairment, and thereupon the par value of all shares issued or to be issued shall be reduced proportionally.

**Sec. 42. Remedy for any stockholder who has not agreed thereto. Proceedings may be annulled or modified. Proceedings conclusive.** Within thirty days after such reduction any stockholder who has not agreed thereto, may file a bill in equity in any county in which said corporation has an established place of business, or in which it held its last stockholders' meeting, for a revision of its proceedings in making said reduction, upon which bill such proceedings may be annulled or modified, so that such reduction shall not exceed the actual impairment of capital. The action of the court, or, if no bill is filed as aforesaid, the action of the corporation, as provided in the preceding section, shall be conclusive upon all parties, whether stockholders or creditors, and such reduction shall not create any personal liability of any stockholder or officer thereof.

**Sec. 43. Copy of proceedings, filed with secretary of state. Penalty for failure, how recovered.** The clerk of said corporation shall file with the secretary of state a certified copy of such proceedings, within thirty days after they are taken, or forfeit one thousand dollars, to be recovered by action of debt in favor of any existing or future creditor of such corporation first suing therefor in any court or county in which a transitory action between the same parties may be brought.

**Sec. 44. Corporation may authorize issue of new shares.** Simultaneously with or after such reduction of its stock, such corporation may from time to time authorize the issue of new shares, of the reduced par value, until the gross capital equals the gross capital authorized by its charter or articles of association before such reduction was made, although the new shares increase the whole issue beyond the number authorized by such charter or articles.

**Sec. 45. Notice of change in charter, to secretary of state.** Whenever a corporation shall make a change in its charter or certificate of organization, in any manner, for the more convenient transaction of its business, it shall forward a notice of such change to the secretary of state, who shall record the same in a book kept for that purpose.

#### *Corporate powers.*

**Sec. 46. General powers of corporations.** Corporations may sue and be sued, plead and be impleaded, in their corporate name; have a common seal alterable at pleasure; elect all necessary officers; prescribe their duties and fix their compen-

sation; make by-laws consistent with the laws of the state and their charters; and hold and convey land and other property.

**Sec. 47. By-laws, what they may determine. Name may be changed and effect thereof.** Corporations may among other provisions, determine by their by-laws, the manner of calling and conducting meetings; the number of members that constitute a quorum; the number of votes to be given by shareholders; by whom any or all officers, except president and directors, shall be elected; by whom vacancies in the board of directors or other offices may be filled; the tenure of the several offices; the mode of voting by proxy; and of selling shares for neglect to pay assessments; and may enforce such by-laws by penalties not exceeding twenty dollars. A corporation, at a legal meeting of its stockholders, may vote to change its name and adopt a new one; and when the proceedings of such meeting, certified by the clerk thereof, are returned to the office of the secretary of state to be recorded by him, the name shall be deemed changed; and the corporation, under its new name, has the same rights, powers, and privileges, and is subject to the same duties, obligations, and liabilities as before, and may sue and be sued by its new name; but no action brought against it by its former name, shall be defeated on that account, but on motion of either party, the new name may be substituted therefor in the action.

**Sec. 48. Corporations may do business out of the state.** Any corporation of this state may conduct business in other states, territories, or possessions of the United States, or in foreign countries, and have one or more officers out of the state, and may hold, purchase, mortgage, and convey real estate and personal property out of this state.

**Sec. 49. May create two or more kinds of stocks.** Every corporation may create two or more kinds of stock with such classes and with such designations, preferences, and voting powers, or restrictions or qualifications thereof, as shall be fixed and determined in the by-laws, or by vote of the stockholders at a meeting duly called for the purpose.

**Sec. 50. Stock may be issued for property and stock of other corporations, or for services, and shall not be liable for further payment thereon.** Any corporation may purchase mines, manufactories, and other property necessary for its business, and the stock of any company or companies owning, mining, manufacturing, or producing materials or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and may likewise issue stock for services rendered to such corporation and the stock so issued shall be full paid stock and not liable to any further call or payment thereon; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased, or services rendered, shall be conclusive.

**Sec. 51. May hold shares of other corporations, and exercise rights of ownership.** Any corporation organized under this chapter and any corporation organized for manufacturing, mechanical, mining, or quarrying business, under special act of the legislature, may purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock of, or any bonds, securities, or evidences of indebtedness created by any other corporation or corporations of this or any other state, territory, or country, and while owners of such stock may exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.

**Sec. 52. May change location from one county to another.** Any corporation organized under this chapter at a legal meeting of its stockholders, by a vote representing a majority of the stock issued, may change its location from one county to another in the state, and the corporation shall file, by its clerk or other officer, in the registry of deeds in each of said counties, within twenty days after such change of location, the certificate required by section twenty-two.

#### *Trusts prohibited.*

**Sec. 53. Formation of trusts forbidden.** It shall be unlawful for any firm or incorporated company, or any number of firms or incorporated companies, or any unincorporated company, or association of persons or stockholders, organized for the purpose of manufacturing, producing, refining, or mining any article or product, which enters into general use and consumption by the people, to form or organize any trust, or to enter into any combination of firms, incorporated or unincorporated companies, or association of stockholders, or to delegate to any one or more board



or boards of trustees or directors the power to conduct and direct the business of the whole number of firms, corporations, companies, or associations which may have formed, or which may propose to form a trust, combination, or association inconsistent with the provisions of this section and contrary to public policy.

**Sec. 54. Evidence of interest in any trust, shall not have legal recognition.** No certificate of stock, or other evidence of interest, in any trust, combination, or association, as named in the preceding section, shall have legal recognition in any court in this state, and any deed of real estate given by any person, firm, or corporation, for the purpose of becoming interested in such trust, combination, or association, or any mortgage given by the latter to the seller, as well as all certificates growing out of such transaction, shall be void.

**Sec. 55. Penalty for being connected with any trust.** Any firm, incorporated or unincorporated company, or association of persons or stockholders, who shall enter in to or become interested in such trust, combination, or association, shall be subject to a fine of not less than five, nor more than ten thousand dollars.

*Rights of minority stockholders.*

**Sec. 56. Corporations shall not sell franchises without consent of stockholders.** No corporation shall sell, lease, or in any manner part with its franchises except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the subject matter of the proposed sale, lease, or consolidation. All such sales, leases, and consolidations shall be subject to the provisions of this and the eleven following sections, and to the prior liens of stockholders as therein defined.

**Sec. 57. Dissent of stockholders shall be filed, and petition entered, with supreme judicial court, that value of shares shall be determined.** If any stockholder in any corporation, which shall vote to sell, lease, or consolidate its franchise, shall vote in the negative and shall file his written dissent therefrom with the president, clerk, or treasurer of such corporation within one month from the day of such vote, the corporation in which he is a stockholder may within one month after such dissent is so filed, enter a petition with the supreme judicial court, sitting in equity, in the county where it held its last annual meeting, in term time or in vacation, setting forth in substance the material facts of the transaction, the action of the corporation thereon, the names and residences of all dissenting stockholders whose dissents were so filed, making such dissenting stockholders parties thereto, and praying that the value of the shares of such dissenting stockholders may be determined, and for other appropriate relief.

**Sec. 58. If corporation fails to enter petition, dissenting stockholder may enter and prosecute the same.** If any such corporation shall fail to enter such petition as aforesaid, any stockholder dissenting as aforesaid, may within one month thereafter enter such petition and prosecute the same, making such corporation party defendant. In either case the court shall fix the time of hearing and shall order notice thereof, to all parties interested, by publication in some newspaper or newspapers at least two weeks successively, and such personal service as is required upon bills in equity.

**Sec. 59. Court shall determine value of shares and secure rights of stockholders. Corporation shall deposit amount of award in some bank. When shares shall become property of corporation.** The court, or any justice thereof in term time or in vacation, shall hear the parties and determine as soon as practicable the value of the stock of such dissenting stockholders; and shall make and enforce all such orders and decrees as may be necessary to secure to such stockholders all their rights. Such corporation shall, notwithstanding any appeal as hereinafter authorized, forthwith deposit the amount so awarded, in some bank or trust company designated by the court, to be by it held until final judgment, and paid to the parties as thereafter ordered by the court directing such deposit. Upon such deposit and upon compliance with final judgment as hereinafter provided, the shares of such stockholders shall become the property of such corporation, and the court may make and enforce such orders as may be necessary to secure its title thereto.

**Sec. 60. Either party may enter appeal, and trial had before a jury. Award, how paid. Appellant shall have lien on property of corporation.** Within thirty days after filing the decree determining such values, as aforesaid, either party may enter an appeal therefrom, to be heard at the next term of the supreme judicial court



in the county where such petition is pending. The issue may thereupon, at the request of any party thereto, be submitted to a jury. If upon such trial the amount of such award is increased, the stockholder shall have judgment and execution against the petitioning corporation or corporation defending, for such increase with interest and costs; and if not increased, such corporation may withdraw from said deposit, the amount of the decrease with interest and costs. During the pendency of such appeal, the appellant shall have a lien upon all the property of the corporation interested in such sale or lease, or consolidation for thirty days after judgment on appeal. Such lien shall have precedence over any mortgages or leases made after any vote of sale, lease, or consolidation. All such liens may be released upon filing with the court, a bond in such amount and with such sureties as the court may approve. Two or more stockholders may join in the same appeal.

**Sec. 61. If dissent is not filed, stockholder shall be deemed to have assented. Guardian may be appointed for incapacitated stockholder. Proviso.** Any stockholder failing to file his dissent as required in section fifty-seven shall be deemed to have assented to such vote. If it appears that any stockholder is legally incapacitated from giving such assent or waiver, the court shall appoint suitable guardians or representatives for such persons, and the case shall then be heard and determined as if such stockholders had filed their dissent as required by section fifty-seven. Provided, however, that, if the proceedings hereby authorized are not had, then as against any stockholder who is a minor, or otherwise legally incapacitated, and who has no guardian, the period of one month in which to file the written dissents aforesaid shall not begin to run until the removal of the incapacity, by the appointment of a guardian or otherwise and actual notice of the vote of sale, lease, or consolidation.

**Sec. 62. Stockholders shall deposit in court, certificates of shares. Transfers shall be subject to final decrees.** Every stockholder appearing in answer to, or filing any petition, by himself, guardian, or other legal representative, shall simultaneously therewith or within such time as the court may allow, deposit in court his certificates of shares duly indorsed to the corporation of which he is a shareholder, or some other sufficient transfer thereof, which shall there remain subject to the order of the court. All attachments and transfers of such shares shall be subject to the final decrees in such proceeding; and any such attaching creditor or transferee shall be allowed to become a party to the proceedings to protect his interests; and if such person, so claiming under such transfer or attachment omits or fails to intervene in such proceedings, his omission as a party shall not bar or impair the proceedings.

**Sec. 63. If corporation fails to pay amount decreed, stockholder may take judgment and execution or withdraw stock. After withdrawal, or if execution is not satisfied, owner shall retain all rights. Lien of dissenting stockholders.** If none of the corporations interested in such petition shall pay or deposit the amount as herein ascertained and decreed, with interest thereon, within such time as the court shall order, any stockholder, entitled to such amount, may at his option take judgment and execution therefor, with interest and costs, against such corporation or withdraw his stock aforesaid; and after such withdrawal or if said execution is returned unsatisfied within thirty days after judgment, the owner of such shares shall retain all the rights of a dissenting stockholder as though no proceedings had taken place. All stockholders entitled to a remedy hereunder, shall have a lien upon the property of the corporations in which they are stockholders which shall take precedence of all mortgages or leases, of any kind made after any vote of sale, lease, or consolidation. Such liens may be released as provided in section sixty.

**Sec. 64. Court may hear and determine petitions, and make orders for enforcement of rights of all parties.** The supreme judicial court, or any justice thereof, may in term time or vacation hear and determine said petitions, and make all orders for giving notice to non-resident parties, and taking action with reference to them, for the enforcement of the rights of any party to the proceedings, for the consolidation of two or more petitions, for the payment of interest on the adjudged value of the shares, for the payment of dividends, pending the proceedings, for interest upon the deposit aforesaid, for the distribution of costs between the parties, and for enforcing its orders and decrees, as are consistent with the principles of equity practice, and as the convenient and speedy settlement of the controversy may require.

**Sec. 65.** If petition fails for any matter of form, new petition may be filed. If any petition shall fail for any matter of form, any party interested therein may file a new petition within two months thereafter. No petition shall be abated by the death of any party, but may thereupon be summarily revived by suggestion and amendment.

**Sec. 66. Exceptions.** The proceedings hereby authorized shall not apply to nor affect any special act relating to the rights of minority stockholders in any particular corporations enacted before April four, eighteen hundred and ninety-one, nor any mortgage legally made.

**Sec. 67. Proceedings for valuing stock under the laws of other states, shall be a bar to any under this chapter.** If either of the corporations interested has consolidated its stock with corporations created by any other state or states, or the stock therein is held by virtue of concurrent legislation of one or more states, and proceedings have been commenced for valuing the stock and paying the value, thereof in any state having jurisdiction, such proceedings, shall, while pending be a bar to any under this chapter; but if such proceedings in any other state shall fail for any reason not touching the merits, a petition may be filed as herein provided, within two months thereafter.

*Corporate contracts and liabilities.*

**Sec. 68. Contracts.** Corporations are bound by parol contracts made by an agent authorized by vote or by their by-laws. Contracts may be implied from corporate acts, or from the acts of the general agent.

**Sec. 69. Provisions of law relating to foreclosure of railroad mortgages given to trustees, applicable to mortgages of all corporations so given.** The provisions of chapter fifty-two, sections forty-two to sixty-three inclusive, shall apply to and include all mortgages of franchises, lands, or other hereditaments, or of all of them, heretofore or hereafter given by any corporation to trustees to secure scrip or bonds of said corporation; and the holder of said scrip or bonds shall have the benefit of all said provisions, whether the said mortgages have been or may be foreclosed in the manner provided by section forty-two of said chapter, or in any other legal manner, and to the extent of and with reference to the property covered by the mortgage; the new corporation, when organized, shall have the rights and privileges of the original corporation.

The sections referred to are as follows:

**Sec. 42.** The trustees, on application of one-third of the bondholders in amount, to have such mortgage foreclosed, shall immediately give notice thereof, by publishing it three weeks successively in the state paper and in some paper, if any, in each county into which the road extends, therein stating the date and conditions of the mortgage, the claims of the applicants under it, that the conditions thereof have been broken, and that for that reason they claim a foreclosure; and they shall cause a copy of such notice and the name and date of each newspaper containing it, to be recorded in the registry of deeds in every such county, within sixty days from the first publication; and unless, within three years from the first publication, the mortgage is redeemed by the mortgagors or those claiming under them, or a bill in equity as in cases of the redemption of mortgaged lands is commenced, founded on payment or a legal tender of the amount of overdue bonds and coupons, or containing an averment that the complainants are ready and willing to redeem on the rendering of an account, the right of redemption shall be forever foreclosed.

**Sec. 43.** Each holder of overdue bonds or coupons shall present them to the trustees at least thirty days before the right of redemption expires, to be by them recorded; and such right is not lost by the non-payment of any claims not so presented; and the parties having the right to redeem shall have free access to the record of such claims.

**Sec. 44.** The foreclosure of the mortgage shall inure to the benefit of all the holders of bonds, coupons, and other claims secured thereby; and they, their successors and assigns are constituted a corporation, as of the date of the foreclosure, for all the purposes, and with all the rights and powers, duties and obligations of the original corporation by its charter; and the trustees shall convey to such new corporation by deeds all the right, title, and interest which they had by the mortgage and the foreclosure thereof, and thereupon they shall be discharged. If they neglect or refuse so to convey, the court, on application in equity, may compel them so to do.

**Sec. 45.** The new corporation may call its first meeting in the manner provided for calling the first meeting of the original corporation, and may use therefor the old name, or by a notice, signed by one or more of said bondholders, setting forth the time, place, and purpose of the meeting, a copy of which is to be published in a newspaper, in the county, if any, otherwise in the state paper, seven days before the meeting; but, at that meeting, it may adopt a new name

by which it shall always thereafter be known; and it may take and hold the possession, and have the use of the mortgaged property, although a bill in equity to redeem is pending, and it may become a party defendant to such bill. This section applies to all corporations mentioned in section sixty.

Sec. 46. If any part of such property or franchise is subject to a prior mortgage, such new corporation, at a legal meeting called for that purpose, may vote to redeem the same, and make an assessment therefor on all holders of stock, certificates for fractions of stock, bonds, or coupons in such corporation in proportion to their amounts. The directors shall immediately assess such sum, and fix a time and place for the payment thereof to the treasurer, who shall publish notice accordingly six weeks successively in some newspaper, if any, in each of the counties where the road extends, the last publication to be two weeks at least before the time fixed for payment.

Sec. 47. If any person fails to pay his assessment within the time fixed, the treasurer shall sell enough of his stock at auction to pay the same, with twelve per cent. interest and the cost of advertising and selling, by first publishing notice of such sale three weeks successively in a newspaper printed in the county where the sale is to be, if any, and if not, in an adjoining county. Thereupon the president and treasurer shall issue a new certificate of stock to the purchaser; and the delinquent stockholder shall surrender his certificate to be canceled, and may have a new one for his unsold shares; and if he held bonds, coupons, or certificates for fractions of stock, he shall not be entitled to commute them or to receive any dividends thereon until he has paid his assessment, with twelve per cent. interest.

Sec. 48. The directors shall apply the money realized from such assessments solely to the redemption of such prior mortgage until it is fully paid; and then all the property, rights, and interests secured thereby vest in such new corporation.

Sec. 49. When a subsequent mortgage of a railroad, its franchise or any part of its other property, contains no provision for a sale, or contains a conditional provision depending on the application of a majority in amount of the claims secured thereby, and no such application has been made to the trustees, the holder of such mortgage may redeem a prior mortgage on the same property which is under process of foreclosure, at any time before it becomes absolute; and holds it in trust for those who contributed thereto in proportion to the amount paid by each.

Sec. 50. For such purpose, the trustees of such subsequent mortgage, on application of one or more persons interested therein, made six months prior to the absolute foreclosure of such prior mortgage, and on payment of reasonable expenses to be incurred thereby, shall call a meeting of all interested and publish a notice thereof, stating the time, place, and purpose, three weeks successively in the state paper and such other papers as they think proper. If at such meeting, or one called by the trustees without application, the holders of a majority of the interests there represented vote to redeem the prior mortgage, each one may contribute his proportion thereto. The trustees shall give immediate notice of such vote by publishing it as above, and shall therein state the time and place of payment, and the amount to be paid on each hundred dollars as nearly as may be. If any one fails to pay his proportion, any other person interested in said subsequent mortgage may pay it, and succeed to all his rights except as hereinafter provided.

Sec. 51. If no such meeting is called, or it is voted not to redeem, one or more of the persons interested in such subsequent mortgage, may pay to the trustees thereof the amount required to redeem the prior mortgage; and such trustees shall redeem it accordingly and then hold it in trust for the person so paying.

Sec. 52. When a prior mortgage has been redeemed in either mode aforesaid, and all persons interested in the subsequent mortgage have not paid their proportions thereof, the trustees shall publish a notice ten weeks successively in the state paper, the first publication not to be until the right of redeeming the prior mortgage would have expired, that delinquents may pay the same to them or their agents, with twelve per cent. interest, within one year from the first publication of said notice; and any person so paying has the same rights as if he had paid originally; and those not so paying are barred. Money so paid shall be divided ratably to those who advanced the redemption money; and they may become a new corporation, and new certificates of stock or fractions of stock may be issued in the manner and with the rights, powers, and obligations hereinbefore provided.

Sec. 53. When a prior mortgage is thus redeemed, any number of the stockholders of the old corporation may redeem it within two years thereafter by paying to the trustees of such subsequent mortgage the amount paid therefor, with ten per cent. interest, and also the amount secured by the subsequent mortgage due to those who had contributed to redeem the prior mortgage, after deducting the net earnings of said road or adding the net deficiencies, if operated by the trustees of the subsequent mortgage; and said stockholders may demand of said trustees an accurate account of the receipts and expenditures and amount due on the mortgage, and have the same remedies for a failure as in case of mortgages of real estate. After such redemption, the redeeming stockholders have all the rights of those from whom they redeemed.

Sec. 54. The stockholders redeeming as aforesaid, shall give notice to the stockholders who have not contributed thereto; and the latter shall have the same rights as hereinbefore provided in the case of bondholders.

Sec. 55. The persons interested in a prior mortgage on which a foreclosure is commenced, at a meeting called for the purpose, may extend the time of redemption; and thereupon the trustees of such mortgage, by a suitable writing, delivered to the party entitled to redeem, shall extend the time accordingly.

Sec. 56. When the franchise of a railroad and its road, wholly or partly constructed, or the right of redeeming the same from a mortgage thereof, are sold by a decree of court, by a power of sale in a mortgage thereof, or on execution, the purchasers have all the rights, powers, and obligations of the corporation, under its charter, and may form a new corporation in the manner hereinbefore provided. If the original corporation or those claiming under it have a right to redeem, they may do so in the manner provided for the redemption of mortgaged real estate; but shall pay in addition to the amount of the sale and interest, the reasonable expenditures made by the new corporation in completing, repairing and equipping said road, and in the purchase of necessary property therefor, after deducting the net earnings thereof.

Sec. 57. The trustees of bondholders or other parties under contract with them operating a railroad, and all corporations formed in the modes hereinbefore provided, have the same rights, powers, and obligations as the old corporation had by its charter and the general laws; but all said rights and privileges are also subject to amendment, alteration or repeal by the legislature and to all the general laws concerning railroads, notwithstanding anything to the contrary in the original charter.

Sec. 58. The original corporation shall exist, after the foreclosure of the mortgage, for the sole purpose of closing its unsettled business; and the right of action against it or its stockholders is not thereby impaired; but in suits founded on any of the bonds or coupons secured by the mortgage, the proportional actual value of the property taken under the mortgage shall be deducted.

Sec. 59. The supreme judicial court, in addition to the jurisdiction specifically conferred by this chapter, has jurisdiction, as in equity, of all other matters in dispute, arising under the preceding sections relating to trustees, mortgages, and the redemption and foreclosure of mortgages; but not to take away any rights or remedies that any party has and may elect to enforce at law; and in all proceedings relating to trustees or to mortgages, their foreclosure and redemption, not otherwise specifically provided for herein, the law relating to trusts and mortgages of real estate may be applied.

Sec. 60. Sections thirty-six to fifty-nine each inclusive, apply to and include all mortgages of franchises, lands, property, hereditaments, and rights of property of every kind whatever, whether heretofore given or hereafter to be given by any corporation to trustees, to secure the payment of scrip or bonds of said corporation in all cases in which the principal of said scrip or bonds has been due and payable for more than three years, and remains unpaid in whole or in part, or on which no interest has been paid for more than three years, in the same way and to the same extent as if the mortgage had been legally foreclosed, subject to all rights of redemption, as provided in section forty-six; and the holders of said scrip or bonds shall have the benefit of said sections, and all the rights and powers of the corporation under its charter, and may form a new corporation in the manner provided in this chapter, whenever the holders of such scrip or bonds to an amount exceeding one-half of the same so elect, in writing. And any subsequent foreclosure, in any method provided by law, of the mortgage given to secure such bonds or scrip, shall inure at once for the benefit of such corporation, and vest therein the title acquired by such foreclosure<sup>1</sup>).

<sup>1</sup>) When a railroad corporation mortgages its franchise for the payment of its bonds or coupons, and trustees are appointed by such corporation, by special law, or by the mortgage, the bondholders, at a regular meeting called for the purpose and notified as herein-after provided may, from time to time, elect by ballot new trustees to fill vacancies, when no other method for filling vacancies is specifically provided in the appointment, special law, or mortgage. Any party interested may present the proceedings of such meeting to the supreme judicial court, or to a justice thereof in vacation, who shall appoint a time of hearing, and order such notice to parties interested as he deems proper, and may affirm such elections, and make and enforce any decrees necessary for the transfer of the trust property, to the new trustees. Such decrees shall be filed with the clerk of the court where the hearing is had, and be recorded by him. — R. S., Ch. 52, Sec. 36.

The neglect of the corporation to pay any overdue bonds or coupons secured by such

mortgage, for ninety days after presentment and demand on the treasurer or president thereof, is a breach of the conditions of the mortgage; and thereupon the trustees shall call a meeting of the bondholders, by publishing the time and place thereof for three weeks successively in the state paper, and in some paper in the county where the road lies, the last publication to be one week at least before the time of the meeting. — R. S., Ch. 52, Sec. 37.

At such meeting and all others, each bondholder present shall have one vote for each hundred dollars of bonds held by him or represented by proxy; and they may organize by the choice of a moderator and clerk, and determine whether the trustees shall take possession of such road, and manage and operate it in their behalf. — R. S., Ch. 52, Sec. 38.

If they so determine, the trustees shall take possession of such road and all other property covered by the mortgage, and have all the rights and powers, and be subject to all the obligations of the directors and corporation

**Sec. 61.** A corporation formed by the holders of such scrip or bonds, or if no such corporation has been formed, the holders of not less than a majority of such scrip or bonds may commence a suit in equity to foreclose such mortgage, and the court may decree a foreclosure thereof, unless the arrears are paid within such time as the court orders.

**Sec. 62.** The capital stock of such new corporation shall be equal to the amount of unpaid bonds and overdue coupons secured by such mortgage, taken at their face at the time of the organization of the new corporation, together with the amount required to redeem any prior mortgage, and shall be divided into shares of one hundred dollars each. All stock issued under the aforesaid provisions shall be taken and considered as paid for in full, and shall not be liable to further assessment; and no person, taking or holding the same, shall by reason thereof be liable for the debts of such corporation.

**Sec. 63.** Any corporation, formed under this chapter by the holders of railroad bonds, may acquire, by purchase, the right of redemption under the mortgage securing such bonds.

**Sec. 70. Service of process on foreign corporation, trustee in mortgage by domestic corporation.** In case of the mortgage of franchises, lands, or other hereditaments by any domestic corporation to a foreign corporation as trustee, service of process may be made on any authorized agent of such foreign corporation in the state; or if no such agent can be found, such service may be made upon the bank examiner, who shall immediately notify the corporation by mail. Service made in either of said methods shall be valid and binding upon the corporation in every respect.

**Sec. 71. Property and franchise may be taken for debts.** The property of any corporation, and the franchise of one having a right to receive a toll established by the state, with its privileges and immunities, are liable to attachment on mesne process and levy on execution for debts of the corporation, in the manner prescribed by law.

**Sec. 72. Names of directors, clerk and schedule of property, to be furnished to an officer.** Every agent or person having charge of corporate property, shall, on request, furnish to any officer having a writ or execution against the corporation for service, the names of the directors and clerk, and a schedule of all property, including debts known by him to belong to the corporation.

**Sec. 73. Officer, having an execution, may elect to take debts due to corporation. Proceedings.** An officer, having an execution against a manufacturing corporation and unable to find property liable to seizure, or the creditor, may elect to satisfy it, in whole or in part, by a debt due to the corporation not exceeding the amount due to the creditor, and the person having custody of the evidence of such debt shall deliver it to such officer with a written transfer thereof to him for the use of the creditor, which shall constitute an assignment thereof, and the creditor, in the name of the corporation, may sue for and collect it, subject to any equitable set-off by the debtor.

**Sec. 74. Penalty for refusing to comply with sections 72 and 73.** Any officer or other person, who unnecessarily neglects or refuses to comply with the two preceding sections, forfeits not exceeding four times the amount due on such execution, and may be imprisoned less than one year.

**Sec. 75. Books to be produced on trial. Refusal punished.** When a suit or prosecution is pending for a violation of section thirty-two or either of the three preced-

of such road, and may also prosecute and defend suits in their own name as trustees. — R. S. Ch. 52, Sec. 39.

They shall keep an accurate account of the receipts and expenditures of such road, and exhibit it, on request, to any officer of the corporation, or other person interested. They shall, from the receipts, keep the road, buildings, and equipments in repair, furnish such new rolling-stock as is necessary, and the balance, after paying running expenses, shall be applied to the payment of any damages arising from misfeasance in the management of the road, and after that according to the rights of parties under the mortgage. They are not personally liable except for malfeasance or fraud. When all overdue bonds and coupons secured by the mortgage are paid, they shall surrender the road and other property to the parties entitled thereto. — R. S., Ch. 52, Sec. 40.

They shall annually, and at other times on written request of one-fifth of the bondholders in amount, call a meeting of the bondholders in the manner prescribed in the by-laws of the corporation for calling a meeting of stockholders, and report to them the state of the property, the receipts, expenses, and the application of the funds. At such meeting, the bondholders may fix the compensation of the trustees; instruct them to contract with the directors of the corporation or other competent party, to operate said road while the trustees have the right of possession, if approved by the bondholders at a regular meeting, otherwise not exceeding two years, and to pay them the net earnings thereof; or may give them any other instruction that they deem advisable; and the trustees shall conform thereto, unless inconsistent with the terms of the trust. — R. S., Ch. 52, Sec. 41.

ing sections, the clerk or person having custody of the books of the corporation shall, upon reasonable written notice, produce them on trial; and for neglect or refusal so to do, he is liable to the same fine or imprisonment as the party on trial would be.

**Sec. 76. Foreign companies may sue and be sued here, and property attached. Effect of agents' acts.** Corporations existing by the laws of another state or of a foreign jurisdiction, may sue or be sued by their corporate name in this state; and if they have property in this state it may be attached and appraised and set off on execution, as the property of non-resident individuals. The acts of their agents have the same effect as the acts of agents of foreign private persons, unless prohibited by law.

*Dissolution of corporations.*

**Sec. 77. Existence after charter expires.** Corporations, whose charters expire or are otherwise terminated, have a corporate existence for three years thereafter; to prosecute and defend suits; to settle and close their concerns; to dispose of their property; and to divide their capitals.

[Sec. 78. Repealed.]

**Sec. 79. Trustees to pay debts; and divide balance.** The debts of the corporation shall be paid in full by such trustees, when the funds are sufficient; when not, ratably to those creditors, who prove their debts, as the law provides, or as the court directs. Any balance remaining shall be distributed among the stockholders or their legal representatives in proportion to their interests.

**Sec. 80. Bill in equity against corporations for dissolution. Notice and proceedings. If no liabilities, dissolution may be had without trustees.** Except where otherwise provided by statute, whenever at any meeting of its stockholders, legally called therefor, such stockholders vote to dissolve such corporation, a bill in equity against the same for dissolution thereof, may be filed by any officer, stockholder, or creditor in the supreme judicial court, in the county in which it has an established place of business, or in which it held its last stockholders' meeting; upon said bill, such notice shall be given as may be ordered by any justice of said court, in term time or vacation, and upon proof thereof, such proceedings may be had according to the usual course of suits in equity, that said corporation shall be dissolved and terminated. Upon proof that there are no existing liabilities against said corporation, and no existing assets thereof, requiring distribution among the stockholders, said court may dissolve said corporation without the appointment of trustees or receivers.

**Sec. 8. Jurisdiction of court. Trustees. Powers and duties. Court may superintend collection and distribution of assets.** Said court has jurisdiction in said cause to appoint receivers, issue injunctions, and pass interlocutory decrees and orders, according to the usual course of proceedings in equity; and shall, moreover, upon dissolving said corporation, or upon terminating its charter, appoint one or more trustees, who shall have all the powers conferred upon similar trustees by sections seventy-seven, seventy-eight, seventy-nine, and eighty-nine, or by any other law of the state, with such special powers as may be given them by said court. But, notwithstanding the appointment of such trustees, said court may superintend the collection and distribution of the assets of said corporation, and may retain said bill for that purpose.

**Sec. 82. No relief from liability.** Nothing in the two preceding sections relieves any officer, shareholder, or other person from any liability, except as provided therein.

**Sec. 83. Decree of dissolution shall be filed with secretary of state.** A copy of every decree or judgment dissolving a corporation or forfeiting its charter shall be forthwith filed by the clerk of the court in the office of the secretary of state and there recorded.

*Liability of stockholders.*

**Sec. 84. Executors, etc., holding stock not personally liable as stockholders.** Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be if they were respectively living and competent to act and hold the stock in their own names.

**Sec. 85. Pledgee of stock not liable as a stockholder.** A pledgee for value, holding a certificate of stock of a corporation for security merely, shall not, while he so holds such stock, be subject to any of the liabilities of a stockholder, unless he appears on the books of the corporation as the absolute owner of such stock.

**Sec. 86. Except in banks, stockholders not liable beyond amount of stock.** No stockholder in any corporation, except in banks, trust, and banking companies, and when otherwise provided by the act of incorporation has, after February twenty-four, eighteen hundred and seventy-one, been liable for the debts of or claims against such corporation beyond any amounts withdrawn or not paid in, as provided in the two following sections; but neither this section nor the four following, affect past or future liabilities of any officer of any corporation; nor any liability of any person or corporation or remedy therefor, existing on said twenty-fourth day of February.

**Sec. 87. Capital stock subscribed, is for security of creditors; payment of subscription to be bona fide.** The capital stock subscribed for any corporation is declared to be and stands for the security of all creditors thereof; and no payment upon any subscription to or agreement for the capital stock of any corporation, shall be deemed a payment within the purview of this chapter, unless bona fide made in cash, or in some other matter or thing at a bona fide and fair valuation thereof.

**Sec. 88. Withdrawal of capital stock, void as against judgment creditor, receivers, or trustees.** No dividend declared by any corporation from its capital stock or in violation of law, no withdrawal of any portion of such stock, directly or indirectly, no cancellation or surrender of any stock, and no transfer thereof in any form to the corporation which issued it, is valid as against any person who has a lawful and bona fide judgment against said corporation, based upon any claim in tort or contract or for any penalty, or as against any receivers, trustees, or other persons appointed to close up the affairs of an insolvent corporation.

**Sec. 89. Proceedings may be by action on the case, or bill in equity. Stockholder not liable unless debt was contracted during his ownership of stock. Action limited to one year.** Any person having such judgment, or any such trustees, receivers, or other persons appointed to close up the affairs of an insolvent corporation, may, within two years after their right of action herein given accrues, commence an action on the case or bill in equity, without demand or other previous formalities, against any persons, if a bill in equity, jointly or severally, otherwise severally, who have subscribed for or agreed to take stock in said corporation and have not paid for the same; or who have received dividends declared from the capital stock, or in violation of law; or who have withdrawn any portion of the capital stock, or cancelled and surrendered any of their stock, and received any valuable consideration therefor from the corporation, except its own stock or obligation therefor; or who have transferred any of their stock to the corporation as collateral security or otherwise, and received any valuable consideration therefor as aforesaid; and in such action they may recover the amount of the capital stock so remaining unpaid or withdrawn, not exceeding the amounts of said judgments or the deficiency of the assets of such insolvent corporation. But no stockholder is liable for the debts of the corporation not contracted during his ownership of such unpaid stock, nor for any mortgage debt of said corporation; and no action for the recovery of the amounts hereinbefore mentioned shall be maintained against a stockholder unless proceedings to obtain judgment against the corporation are commenced during the ownership of such stock, or within one year after its transfer by such stockholder is recorded on the corporation books.

**Sec. 90. What may be proved by any of the defendants.** A defendant in such suit may prove that he has already in good faith paid by himself or through another person who has assumed his stock or subscription, to any person holding a bona fide judgment, or to any such trustee or receiver, or other person authorized to receive it, or to the corporation itself, the whole or any part of any amounts for which he would be liable under this chapter; or that he has already in good faith and without collusion been sued for, and is still in peril of being compelled to pay, such amounts in whole or in part, to some other person, in which latter case the suit may be continued to await, on payment of defendant's costs from term to term; or he may prove that the amounts illegally received by him from said corporation were received more than two years before the claim arose on which such judgment was obtained, or if the suit is by trustees, receivers, or other such person, more

than two years before the commencement of the legal proceeding by virtue of which such corporation passed into the hands of trustees or receivers; or he may prove the invalidity of such judgment in any particular which could avail the corporation on a writ of error, or that said judgment was not bona fide; or he may prove that he has bona fide claims in contract or tort, several, or joint with other persons, against said corporation, absolute or contingent, or which could be availed of by set-off in court or on execution, for the whole or any part of the amounts for which he would be liable under this chapter; or in case his stock was transferred to such corporation as collateral security or as payment, he may either prove that the same was so transferred in good faith as security or payment for, or of, an anterior liability incurred without any concurrent agreement for the transfer of such stock, and for which the corporation was unable to obtain other sufficient security or payment, or in such case he may prove that whatever sum was received thereon, has been in whole or part repaid to such corporation; and proof of any of such matters is a full or partial defense for such defendant.

**Sec. 91. Stockholders, paying for corporation, may recover contribution.** When members of a corporation are liable for its debts, or for any acts of its officers or members, or to contribute for money paid on account of such debts or acts, the amount due may be recovered of such corporation by an action at law, or a bill in equity; and the court may make all necessary orders and decrees.

**Sec. 92. Not to divide capital until debts paid.** Corporations, not created for literary, benevolent, or banking purposes, shall not so divide any of their corporate property as to reduce their stock below its par value, until all debts are paid, and then only for the purpose of closing their concerns.

**Sec. 93. Judgment creditor may file bill in equity in certain cases.** When such a corporation has unlawfully made a division of any of its property, or has property which cannot be attached, or is not by law attachable, any judgment creditor may file a bill in equity in the supreme judicial court, setting forth the facts, and the names of such persons as are alleged to have possession of any such property, or choses in action, either before or after division; names of defendants may be struck out or added by leave of court; costs awarded at discretion, and service made on the defendants named, as in other equity suits. They shall in answer thereto, disclose on oath all facts within their knowledge relating to such property in their hands, or received by a division among stockholders. When either of them has the custody of the records of the corporation, he shall produce them and make extracts therefrom and annex them to his answer, as the court directs.

**Sec. 94. Proceedings, trial, and decree in the suit.** The court shall determine, with or without a jury, whether the allegations in the bill are sustained, and it may decree, that any such property shall be paid to such creditor in satisfaction of his judgment, and cause such decree to be enforced as in other chancery cases. Any question arising may, at the election of either party, be submitted to the decision of a jury under the direction of the court.

**Sec. 95. On dissolution, estate vests in shareholders.** When a corporation is dissolved, its real and personal estate is vested in the persons who were at the time shareholders, as tenants in common according to their interests.

**Sec. 96. Property of inhabitants of counties, towns, etc., may be taken for debts.** The property of the inhabitants of counties, towns, cities, and other quasi corporations, may be taken to pay any debt due from the body politic, of which they are members. All sums so paid, with interest and costs, may be recovered of such body politic.

---

### Miscellaneous Provisions.

**Deeds and contracts by agent bind principal.** Deeds and contracts, executed by an authorized agent of a person or corporation in the name of his principal, or in his own name for his principal, are in law the deeds and contracts of such principal. R. S. C. 75, sec. 18.

**Forgery by false certificates, and fictitious signatures.** If any person, legally authorized to take the proof or acknowledgment of any instrument that by law may be recorded, wilfully and falsely certifies that such proof or acknowledgment was duly made; or if any person fraudulently affixes a fictitious or pretended signature, purporting to be that of an officer or agent of a corporation, to any written



instrument purporting to be a draft, note, or other evidence of debt issued by such corporation, with intent to pass the same as true, although such person never was an officer or agent of such corporation, or never existed, he is guilty of forgery and shall be punished as provided in section one. [R. S., c. 122, sec. 9.]

**Making or issuing false certificates of stock, or pledging genuine, without authority.** If an officer or agent of a corporation wilfully signs with intent to issue, or issues any certificate purporting to be a certificate or other evidence of the ownership or of the transfer of any stock in such corporation, not authorized by its charter, by-laws, or votes, or without such authority issues, sells, or pledges such certificate or other evidence of ownership or transfer of stock after it is lawfully signed, he shall be punished by imprisonment in the state prison for not more than ten years, and by fine not exceeding one thousand dollars. [R. S., c. 122, sec. 10.]

**Acting for corporation after forfeiture of charter.** Whoever undertakes to do business, or does business of any kind in behalf of any corporation, the charter of which has been forfeited under the provisions of chapter two hundred and thirty-five, of the public laws of nineteen hundred and three, or holds out such corporation as doing business, or sells, transfers, or puts upon the market any stocks or other evidence of indebtedness whatsoever of any corporation, such shall be punished by a fine of three hundred dollars. [R. S., c. 122, sec. 11.]

## **Laws, 1905, c. 85. An Act to provide for the Appointment of Receivers of Corporations.**

**Sec. 1. Proceedings for obtaining injunction. Decree of dissolution.** Whenever any corporation shall become insolvent, or be in imminent danger of insolvency, or whenever through fraud, neglect, or gross mismanagement of its affairs, or through attachment, litigation, or otherwise, its estate and effects are in danger of being wasted or lost, or whenever it has ceased to do business, or its charter has expired or been forfeited, upon application of any creditor or stockholder by bill in equity filed in the supreme judicial court in the county in which it has an established place of business, or in which it held its last stockholders' meeting, upon which bill such notice shall be given as may be ordered by any justice of such court, in term time or vacation, such court may, if it finds that sufficient cause exists, issue an injunction, both temporary and permanent, restraining said corporation, its officers, and agents, from receiving any moneys, paying any debts, selling, or transferring any assets of the corporation, or exercising any of its privileges or franchises until further order, and may at any time make a decree dissolving said corporation.

**Sec. 2. Appointment of receivers. Dissolution of attachments.** At the time of ordering any such injunction or at any time afterwards during its continuance, such court may also appoint one or more receivers to wind up the affairs of the company, who shall be duly sworn, and give bond in such sum and upon such conditions as such court shall determine, and shall at all times be subject to the direction and control of the court, which may at any time remove said receiver and appoint another in his place. All attachments made within thirty days before the filing of any such bill in equity, wherein a receiver is so appointed, shall thereupon be dissolved.

**Sec. 3. Suits by or against receiver. May carry on business. To report to court once in six months.** Such receiver shall have power to institute or defend suits at law or in equity, in his own name as receiver, to demand, collect, and receive all property and assets of said corporation, to sell, transfer, or otherwise convert the same into cash, and to conduct and carry on the business of said corporation, as ordered by the court, if it appears for the best interests of all concerned. He shall report to the court at least as often as every six months a statement of all the assets and liabilities of said corporation, and from time to time shall distribute the assets of said corporation as provided in section seventy-nine of chapter forty-seven.

**Sec. 4. Time limit for presentation of claims.** Whenever a receiver is appointed as above, the court shall limit a time, not less than four months, of which decree notice shall be given, within which all claims against said corporation shall be presented, and make such order for the manner of hearing and proving same as may be just and proper.

**Sec. 5. Sale of corporate property and franchises. Acceptance of claims in payment.** Said court may in its discretion, in lieu of decreeing the dissolution of such corporation, order the receiver to sell its property and franchises; and the purchaser thereof shall succeed to all the rights and privileges of such corporation, and may reorganize the same under the direction of said court. At any sale of such property at public auction, the court may, in its discretion, authorize the receiver to accept in payment, duly allowed claims against such corporation, at a proper valuation.

**Sec. 6. Equity jurisdiction of court.** The court shall have jurisdiction in equity of all proceedings hereunder and may make such orders and decrees as equity may require.

**Sec. 7. Sec. 78, Ch. 47, R. S., repealed.** Section seventy-eight of chapter forty-seven of the revised statutes is hereby repealed.

---

### **Laws, 1905, c. 171. An Act prohibiting the Use of Titles ordinarily applied to Banks and Trust Companies by other than duly authorized Banking Corporations.**

---

**Sec. 1. Titles indicative of banking or trust company business not to be used.** No person, partnership, association, or corporation, hereafter organized, excepting those duly authorized under the laws of this state or of the United States to conduct a bank or trust company business, shall use as a part of their name or title or as designating their business, the word or words "bank," "savings," "savings bank," "savings department," "trust," "trust company," "banking," or "trust and banking company," or the plural of any such word or words in, or in connection with, any other business than that of a bank or trust company duly authorized as aforesaid. Any person, partnership, association, or corporation violating the provisions of this section may be enjoined therefrom by any court having general equity jurisdiction, on application of the bank examiner or of any person, corporation, or association injured or affected by such use, and any person or persons violating the provisions of this section either individually, as members of a copartnership or as interested in any such corporation, may be punished on indictment by a fine not exceeding one thousand dollars or by imprisonment for not less than sixty days nor more than one year or by both fine and imprisonment.

---

### **Laws, 1907, c. 71. An Act to authorize the Issue of Bonds on the Serial Payment Plan.**

---

**Sec. 1. Bonds may be payable in instalments. 50 year limit.** Whenever any county, city, town, or water district, or corporation organized under the laws of this state has occasion to issue bonds they may be made payable by installments of uniform or increasing amounts extending over a period not exceeding fifty years.

**Sec. 2. Provisions for payment.** Provisions shall be made for the payment of not less than one per cent. of the whole issue per year and in case the time of payment extends over a period of fifty years the installments shall cover the whole issue. In case the time of payment extends over a period of less than fifty years a portion of the issue greater than the regular installment may be made payable at the end of the period.

**Sec. 3. Time limits modified.** Limitations upon the time for which bonds may be issued are modified in accordance herewith.

---

### **Laws, 1909, c. 61. An Act relating to Change of Names of Railroads and other Corporations.**

---

**Sec. 1. Change of name; when to take effect.** Whenever any railroad corporation or other corporation, required by law to make returns to any official department of the state, shall change its name under the general laws of the state, or through special act of the legislature, such change shall not take effect and such new names

shall not be used until said corporation shall have filed with said official or said department a certified copy of the vote of the corporation relative thereto.

**Sec. 2. Certificate of change of name to be filed with secretary of state.** Whenever a corporation is organized under the provisions of section 44, section 56, or section 60, of chapter 52 of the revised statutes, or under any other provision of statute by which a return is not now specifically required, such corporation shall file with the secretary of state, and, if a railroad corporation, also with the board of railroad commissioners, a certificate signed and sworn to by the president, treasurer, and a majority of the directors of such corporation, therein setting forth the name of the corporation and all the facts in relation to such organization which are necessary to give full information in relation thereto; and the organization of such corporation shall date from, and it shall have the authority and rights of a corporation only after, the time of filing said certificate.

**Sec. 3. When certificate of changes heretofore made shall be filed.** Corporations which have heretofore been organized and the names of which heretofore have been changed and which have not heretofore filed a report of such change of name, shall within three months from the taking effect of this act make the returns as provided for in sections 1 and 2.

## **Laws, 1909, c. 113. An Act in respect of Foreign Corporations.**

**Sec. 1. Foreign corporations must appoint secretary of state their attorney; filing of power of attorney; fee.** Every corporation established under laws other than those of this state for any lawful purpose other than as a bank, savings bank, trust company, surety company, safe deposit company, insurance company, or public service company, which has a usual place of business in this state, or which is engaged in business in this state permanently or temporarily, without a usual place of business therein, shall before doing business in this state, in writing appoint the secretary of state and his successor in office to be its true and lawful attorney upon whom all lawful processes in any action or proceeding against it may be served, and in such writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on it, and that the authority shall continue in force so long as any liability remains outstanding against it in this state. The power of attorney and a copy of the vote authorizing its execution, duly certified and authenticated, shall, upon payment of a fee of ten dollars, be filed in the office of the secretary, and copies certified by him shall be sufficient evidence thereof. Service of such process shall be made by leaving a copy of the process and a fee of two dollars in the hands or in the office of the secretary, and such service shall be sufficient service upon the corporation.

**Sec. 2. Secretary of state shall notify corporation of service of legal process.** When legal process against any such corporation has been served upon the secretary, he shall immediately give notice to the corporation of such service by mail, postage prepaid, directed, in the case of a corporation established in a foreign country, to the resident manager, if any, in the United States; and shall, within two days after such service, in the same manner forward a copy of the process served upon him to such corporation or manager, or to any other person designated by the corporation by written notice filed in the office of the secretary. The fee of two dollars paid by the plaintiff to the secretary at the time of the service shall be taxed in his costs, if he prevails in the suit. The secretary shall keep a record of the day and hour of the service of all such processes.

**Sec. 3. Copy of certificate of incorporation and by-laws to be filed; what certificate must set forth; effect of failure to comply with this act.** Every such foreign corporation, before transacting business in this state, shall, upon payment of the fee hereinafter provided, file with the secretary of state a copy of its charter, articles or certificate of incorporation, certified under the seal of the state or country in which such corporation is incorporated by the secretary of state thereof or by the officer having charge of the original record therein, a true copy of its by-laws, and a certificate in such form as the secretary of state may require, setting forth a) the name of the corporation; b) The location of its principal office; c) The names and addresses of its president, treasurer, clerk, or secretary and of the members of its board of directors; d) The date of its annual meeting for the election of offi-

cers; e) The amount of its capital stock, authorized and issued, the number and par value of its shares, and the amount paid in thereon to its treasurer. Said certificate shall be subscribed and sworn to by its president, treasurer, or clerk. The officers and directors of such corporation shall be subject to the same penalties and liabilities for false and fraudulent statements and returns as officers and directors of a domestic corporation. Every officer of such a corporation which fails to comply with the requirements of this section and of sections one and six, and every agent thereof who transacts business as such in this state shall, for such failure, be liable to a fine of not more than five hundred dollars. Such failure shall not affect the validity of any contract with such corporation, but no action shall be maintained or recovery had in any of the courts of this state by any such foreign corporation so long as it fails to comply with the requirements of said sections.

**Sec. 4. Secretary may refuse to file certificate.** The secretary of state shall refuse to accept or file the charter, certificate, or other papers of, or accept appointment as attorney for service for, any such corporation which does a business in this state, the transaction of which by domestic corporations is not then permitted by the laws of this state.

**Sec. 5. Filing of certificate of change in capital stock.** All such foreign corporations shall, within thirty days after the payment in of an increase of capital stock, upon payment of the fee hereinafter provided, file in the office of the secretary of state a certificate of the amount of such increase and the fact of such payment, signed and sworn to by its president, treasurer, or clerk. Within thirty days after the vote of such corporation authorizing a reduction of its capital stock, a copy of such vote, signed and sworn to by the clerk of the corporation, shall, upon payment of the fee hereinafter provided, be filed in the office of the secretary of state.

**Sec. 6. Filing of changes in certificate of incorporation.** Every such foreign corporation shall annually, within thirty days after the date fixed for its annual meeting last preceding the date of such certificate, or within thirty days after the final adjournment of said meeting, but not more than three months after the date so fixed for said meeting, prepare and file in the office of the secretary of state, upon payment of a fee of ten dollars, a certificate signed and sworn to by its president, treasurer, or clerk showing the change or changes, if any, in the particulars included in the certificate required by section three made since the filing of said certificate or of the last annual report.

**Sec. 7. Penalties.** Any such foreign corporation which omits to file the certificate required by section six, shall forfeit to the state not less than five nor more than ten dollars for each day for fifteen days after the expiration of the period therein named, and not less than ten nor more than two hundred dollars for each day thereafter, during which such omission continues.

**Sec. 8. Duty of secretary of state.** The secretary of state, upon the failure of any such corporation to file the certificate required by section six, shall forthwith notify such corporation, and the notice shall contain a copy of this and the two preceding sections, but failure on the part of the secretary of state to so notify shall not relieve any corporation of any of the duties or liabilities imposed thereon by this act.

**Sec. 9. Liability of officers.** The officers of such foreign corporations shall be jointly and severally liable for all the debts and contracts of the corporation contracted or entered into while they are officers thereof, if any statement or report which is required by the provisions of this act is made by them which is false in any material representation and which they know to be false; but only the officers who sign such statement or report shall be so liable.

**Sec. 10.<sup>1)</sup> Foreign corporations entitled to benefit of law relating to limitation of actions.** Any foreign corporation doing business continuously in this state, and having constantly an officer or agent resident herein, on whom service of any process may be made, shall be entitled to the benefit of all provisions of law relating to limitation of actions the same as domestic corporations. [R. S., c. 83, sec. 107.]

---

<sup>1)</sup> Arbitrary section number.

## Massachusetts.

### Acts, 1903, c. 437. An Act relative to Business Corporations.<sup>1)</sup>

#### General provisions.

**Sec. 1. Application of act.** This act may be cited as the business corporation law. It shall, except as herein otherwise provided, apply: a) To all corporations having a capital stock and established for the purpose of carrying on business for profit heretofore or hereafter organized under general laws of the commonwealth; b) To all such corporations heretofore created under special laws of the commonwealth, except so far as its provisions are inconsistent with the provisions of any such special laws enacted before the eleventh day of March in the year eighteen hundred and thirty-one as are no subject to amendment, alteration, or repeal by the general court; c) To all such corporations hereafter created under special laws of the commonwealth so far as its provisions are consistent with the provisions of said special laws. It shall not apply to corporations organized under general or special laws of this commonwealth for the purpose of carrying on within the commonwealth the business of a bank, savings bank, co-operative bank, trust company, surety or indemnity company, or safe deposit company, or to corporations organized under general or special laws of this commonwealth for the purpose of carrying on within the commonwealth the business of an insurance company, railroad, electric railroad or street railway company, telegraph or telephone company, gas or electric light, heat or power company, canal, aqueduct, or water company, cemetery or crematory company, or to any other corporations which now have or may hereafter have the right to take or condemn land or to exercise franchises in public ways granted by the commonwealth or by any county, city, or town. But the provisions of this section except as hereinbefore provided, shall not be construed to prohibit the organization of a corporation under the provisions of this act for the purpose of carrying on any lawful business outside of this commonwealth.

Corporations incorporated by special act prior to February 23, 1830, may adopt the provisions of this Act. Acts, 1910, c. 353.

**Sec. 2. Rights and liabilities of existing corporations.** Corporations organized under general laws shall be subject to the provisions of all laws hereafter enacted which may affect or alter their corporate rights or duties or which may dissolve them; but they shall, notwithstanding their dissolution, be subject to the provisions of sections fifty-two and fifty-three. Such amendment, alteration, or dissolution shall not take away or impair any remedy which may exist by law, consistently with said sections, against such corporations, their stockholders or officers for a liability previously incurred. The charters of all corporations which are subject to the provisions of this act and which have been incorporated by special law since the eleventh day of March in the year eighteen hundred and thirty-one and of all such corporations as may be hereafter incorporated by special law shall be subject to amendment, alteration, or repeal by the general court. Corporations of the kind which are subject to the provisions of this act, and which were incorporated by special law before such date, may, by amendment to their certificate of organization, adopted as provided in section forty, and filed as provided in section forty-one, reorganize under this act, and thereupon and thereafter, they shall be governed in all respects by its provisions.

**Sec. 3. Commissioner of corporations.** The commissioner of corporations shall examine the certificates and reports submitted to him under the provisions of this act, and make suitable indorsements upon such as conform to the requirements of law. He shall keep a record of the names of corporations which submit certificates to his inspection, of the date of inspection and of his certificates when given, and of the result in brief of his inspection. He shall report to the attorney-general instances of neglect or omission on the part of corporations to comply with the provisions of this act for the enforcement of the penalties therefor. If a vacancy exists or if the commissioner is absent from his office, the first clerk shall perform the duties of the commissioner, and legal process served upon said clerk shall have the same force and effect as if served upon the commissioner.

<sup>1)</sup> See also the uniform stock transfer act, *supra*.

**Sec. 4. Corporate powers.** Every corporation which is subject to the provisions of this act shall have the following powers and privileges and shall be subject to the following liabilities: a) To have perpetual succession in its corporate name, unless a period for its duration is limited by special law; b) To sue or be sued in its corporate name, and to prosecute or defend to final judgment an execution or decree in any court of law or equity; c) To have a capital stock to such an amount as may be fixed in its agreement of association or articles of organization or of amendment as hereinafter provided; d) To have a corporate seal, which it may alter at pleasure; e) To elect all necessary officers, fix their compensation and define their duties; f) To hold, purchase, convey, mortgage, or lease within or without this commonwealth such real or personal property as the purposes of the corporation may require; g) To make contracts, incur liabilities and borrow money on its credit and for its use; h) To make by-laws not inconsistent with the laws of this commonwealth for regulating its government and for the administration of its affairs as hereinafter provided; i) To be dissolved or to have its affairs wound up in the manner hereinafter provided.

**Sec. 5. Corporate name.** A corporation which is organized under general laws may assume any name which shall indicate that it is a corporation as distinguished from a natural person or a partnership; but it shall not assume the name of another domestic corporation, or of a foreign corporation, or of any partnership or association, carrying on business in this commonwealth at the time of such organization or within three years prior thereto, or a name so similar thereto as to be liable to be mistaken for it, except with the consent in writing of such existing corporation, association or partnership filed with the articles of organization. The supreme judicial court or the superior court shall have jurisdiction in equity, upon the application of any corporation, partnership, association or person interested or affected, to enjoin such corporation from doing business under a name assumed in violation of the provisions of this section although its articles of organization may have been approved and a certificate of incorporation may have been issued to it.

### Organization of corporations.

**Sec. 6. Organization under special charter.** A corporation which is created by special charter shall, if no time is limited therein, be organized within two years after the passage of its act of incorporation. The persons named in said act and their associate subscribers to stock before the date of the act shall hold the franchise or privileges granted until the corporation is organized.

**Sec. 7. Organization under general laws.** Three or more persons may associate themselves by a written agreement of association with the intention of forming a corporation under general laws for any lawful purpose which is not excluded by the provisions of section one except to buy and sell real estate.

**Sec. 8. Agreement of association.** The agreement of association shall state: a) That the subscribers thereto associate themselves with the intention of forming a corporation; b) The corporate name assumed; c) The location of the principal office of the corporation in the commonwealth, and elsewhere in the case of corporations organized to do business wholly outside the commonwealth; d) The purposes for which the corporation is formed and the nature of the business to be transacted; e) The total amount of the capital stock of the corporation, which shall not be less than one thousand dollars, to be authorized; the par value of the shares, which shall not be less than five dollars; the number of shares into which capital stock is to be divided, and the restrictions, if any, imposed upon their transfer; and, if there are to be two or more classes of stock, a description of the different classes and a statement of the terms on which they are to be created and of the method of voting thereon; f) Any other provisions not inconsistent with law for the conduct and regulation of the business of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or stockholders, or any class of stockholders; g) The subscriber or subscribers by whom the first meeting of the incorporators shall be called; h) The names and residences of the incorporators and the amount of the stock subscribed for by each.

**Sec. 9. First meeting of incorporators; notice.** The first meeting of the incorporators of a corporation created by special law shall, unless such law otherwise provides, be called by a notice signed by a majority of the persons named in the

act of incorporation; and the first meeting of the incorporators of a corporation organized under general laws shall be called by a notice signed either by such subscriber to the agreement of association as may be designated therein or by a majority of the subscribers to such agreement; and such notice shall state the time, place, and purposes of the meeting. A copy of such notice shall, seven days at least before the day appointed for the meeting, be given to each incorporator or left at his residence or usual place of business, or deposited in the post office, postage prepaid, and addressed to him at his residence or usual place of business, and another copy thereof, and an affidavit of one of the signers that the notice has been duly served, shall be recorded with the records of the corporation. If all of the incorporators shall in writing, indorsed upon the agreement of association, or, in the case of a corporation created by a special law, upon the charter or a certified copy thereof, waive such notice and fix the time and place of the meeting, no notice shall be required.

**Sec. 10. Organization; election of officers.** At such first meeting, or at any adjournment thereof, the incorporators shall organize by the choice, by ballot, of a temporary clerk, who shall be sworn, by the adoption of by-laws and by the election in such manner as the by-laws may determine of directors, of a treasurer, of a clerk, and of such other officers as the by-laws may prescribe. The temporary clerk shall make and attest a record of the proceedings until the clerk has been chosen and sworn, including a record of such choice and qualification.

**Sec. 11. Completion of organization; articles of organization.** A majority of the directors who are elected at such first meeting shall forthwith make, sign and make oath to articles setting forth: a) A true copy of the agreement of association and the names of the subscribers thereto, or of the act of incorporation, as the case may be; b) The date of the first meeting and of the successive adjournments thereof, if any; c) The amount of capital stock then to be issued; the amount thereof to be paid for in full in cash; the amount thereof to be paid for in cash by instalments and the instalment to be paid before the corporation commences business; and the amount thereof to be paid for in property. If such property consists in any part of real estate, its location, area and the amount of stock to be issued therefor shall be stated; if any part of such property is personal, it shall be described in such detail as the commissioner of corporations may require, and the amount of stock to be issued therefor stated. If any part of the capital stock is issued for services or expenses, the nature of such services or expenses and the amount of stock which is issued therefor shall be clearly stated; d) The name, residence, and post office address of each of the officers of the corporation. The directors who sign such articles shall be jointly and severally liable to any stockholder of the corporation for actual damages caused by any statement therein which is false and which they know to be false.

**Sec. 12. Certificate of incorporation.** The articles of organization and the record of the first meeting of the incorporators shall be submitted to the commissioner of corporations, who shall examine them and who may require such amendment thereof or such additional information as he may consider necessary. If he finds that the articles conform to the provisions of the preceding sections relative to the organization of the corporation, he shall so certify and indorse his approval thereon. Thereupon, the articles shall, upon payment of the fee hereinafter provided, be filed in the office of the secretary of the commonwealth, who shall cause them and the indorsement thereon to be recorded, and, except in the case of a corporation created by special law, shall thereupon issue a certificate of incorporation in the following form:

#### Commonwealth of Massachusetts.

Be it known that whereas (the names of the subscribers to the agreement of association) have associated themselves with the intention of forming a corporation under the name of (the name of the corporation), for the purpose (the purpose declared in the agreement of association), with a capital stock of (the amount fixed in the agreement of association, with a statement of the several classes into which the stock is divided and their respective amounts, and of the method of paying for such stock, whether by cash in full, cash on instalments, property, or partly cash and partly property), and have complied with the provisions of the statutes of this commonwealth in such case made and provided, as appears from the articles of organization of said corporation, duly approved by the commissioner of corporations and recorded in this office: now, therefore, I (the name of the secretary), secretary of the commonwealth of Massa-

chusetts, do hereby certify that said (the names of the subscribers to the agreement of association), their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of (name of the corporation), with the powers, rights, and privileges, and subject to the limitations, duties, and restrictions, which by law appertain thereto.

Witness my official signature hereunto subscribed, and the great seal of the commonwealth of Massachusetts hereunto affixed, this            day of            in the year            (the date of filing of the articles of organization).

The secretary shall sign the certificate of incorporation and cause the great seal of the commonwealth to be thereto affixed, and such certificate shall have the force and effect of a special charter. The existence of every corporation which is not created by special law shall begin upon the filing of the articles of organization in the office of the secretary of the commonwealth. The secretary of the commonwealth shall also cause a record of the certificate of incorporation to be made, and such certificate, or such record, or a certified copy thereof, shall be conclusive evidence of the existence of such corporation.

**Sec. 13. By-laws.** Every corporation may determine by its by-laws the time and place of holding and the manner of conducting its meetings, and, in accordance with the provisions of section eighteen, of electing its officers, the powers, duties and tenure of its officers, the number of its directors, the number of stockholders and of directors necessary to constitute a quorum, the manner of calling regular and special meetings of the directors, the expediency of providing for an executive committee, the number of members thereof, and the duties which may be delegated to it, the method of making demand for payment of subscriptions to its capital stock the conditions under which a new certificate of stock may be issued in place of a certificate which is alleged to have been lost or destroyed, the method in general of transacting its business and the manner by which the by-laws may be altered, amended, or repealed.

**Sec. 14. Issue of stock.** Capital stock may be issued for cash, property, tangible or intangible, services or expenses. Stock which is issued for cash may be paid for in full before it is issued or by instalments. If it is paid for by instalments, the stock certificate shall be legibly stamped with the words “— per cent paid up, balance payable [stating manner and time of payment] — and shares subject to forfeiture if unpaid”, the proportion and terms of payment being stated to agree with the facts; and, as each instalment is demanded and paid, the certificate shall be stamped accordingly. Stock may be issued subsequent to the issue of stock certified by the articles of organization if a certificate is prepared within thirty days after the date when the issue of such additional stock has been authorized, and is signed and sworn to by the president, treasurer and a majority of the directors setting forth: a) The total amount of capital stock authorized; b) The amount of stock already issued for cash payable by instalments and the amount paid thereon; also the amount of full paid stock already issued for cash, property, services, or expenses; c) The amount of additional stock to be issued for cash, property, services or expenses respectively; d) A description of said property, and a statement of the nature of said services or expenses, in the manner required by the provisions of section eleven. Such certificate shall be submitted to the commissioner of corporations, who shall examine it in the same manner as the original articles of organization. If he finds that it conforms to the requirements of law, he shall so certify and indorse his approval thereon, and it shall thereupon be filed in the office of the secretary of the commonwealth who, upon payment of the fee hereinafter provided, shall cause it and the indorsement thereon to be recorded. No issue of stock subsequent to the issue of stock certified by the articles of organization shall be lawful until said certificate shall have been filed in the office of the secretary of the commonwealth as aforesaid. No stock shall be at any time issued unless the cash, so far as due, or the property, services, or expenses for which it was authorized to be issued has been actually received or incurred by, or conveyed or rendered to, the corporation; and the president, treasurer, and directors shall be jointly and severally liable to any stockholder of the corporation for actual damage caused to him by such issue.

**Sec. 15. Payment of subscriptions to stock.** If, by the provisions of the articles of organization, capital stock which is issued for cash is to be paid for in full before it is issued, the directors may require payment of the subscriptions therefor in such



proportions and at such times and places as they deem proper by making demand therefor according to the by-laws, or, in default of such by-law, by a notice mailed to each subscriber at least seven days before such subscription is payable. If the subscriber refuses or neglects to pay the amount so demanded for thirty days after the time limited in such notice for payment, his rights of subscription may be sold by public auction by the treasurer of the corporation who, out of the proceeds of such sale, shall pay to the corporation the amount then due from such subscriber with interest and incidental charges, first giving notice by mail to such subscriber, not less than ten days prior to such sale, of the time and place appointed therefor and of the amount due and payable by him. Upon the sale of such rights as aforesaid, the directors shall give to the purchaser a certificate thereof. If the rights of such subscriber do not sell for an amount sufficient to pay the amount due from him with interest and charges of sale, he shall be liable to the corporation in an action at law for the deficiency; if they sell for more, he shall be entitled to the surplus. At the expiration of thirty days after the time limited for payment as aforesaid, the directors may waive their right to offer such rights for sale, and may elect to proceed by an action at law against such delinquent subscriber to recover all amounts due and payable by him with interest. If said rights are not sold at said auction, or if a judgment rendered in an action against a subscriber remains unsatisfied for thirty days, all amounts previously paid by him shall be forfeited to the corporation.

**Sec. 16. Payment of stock by instalments. Notice of sale.** If stock is issued payable by instalments, the directors may require the payment of subscriptions for stock in such proportions and at such times and places as they deem proper, by making demand therefor according to the by-laws and by a notice mailed to each stockholder at least two weeks before any instalment is payable. If a stockholder neglects to pay an instalment for thirty days after the time limited in such notice for payment, the treasurer of the corporation may sell such stockholder's shares by public auction, and, out of the proceeds of such sale, shall pay to the corporation all instalments then due from such stockholder with interest and incidental charges. A notice stating the time and place of such sale and the amount of the instalment due and payable and also the number of the certificate and number of shares of stock thus offered for sale shall be sent by the treasurer by mail not less than ten days prior to such sale to such stockholder and also to the person who originally subscribed to the said delinquent stock. Upon the sale of such stock as aforesaid, the directors shall transfer the shares so sold to the purchaser, who shall be entitled to a certificate therefor; and thereupon, the outstanding certificate shall be void. The balance of the proceeds of such sale shall be held by the corporation for such stockholder, his representatives or assigns, and be paid to him or them at any time upon surrender and delivery to the corporation of his certificate. If no person offers an amount sufficient to pay all instalments due upon such stock with interest and incidental charges, it shall not be sold, but the delinquent stockholder shall be liable to the corporation in an action at law for such instalments, interest and incidental charges, and if a judgment rendered in such action remains unsatisfied for thirty days, the original subscriber shall be so liable. Instead of offering such stock for sale, the directors, at the expiration of the time limited in the notice for payment of such instalments, may proceed by an action at law against the delinquent stockholder, and, if a judgment rendered against him in such action remains unsatisfied for thirty days, against the original subscriber, for the recovery of such instalments, interest, and incidental charges. The delinquent stockholder or the original subscriber, as the case may be, upon the payment of such instalments, interest, and incidental charges, or of the judgment therefor, shall be entitled to a certificate of the stock, so stamped as to indicate the payments made, and, thereupon, the original certificate for such stock shall be void. If a judgment rendered in an action against the original subscriber remains unsatisfied for thirty days, said stock shall be forfeited to the corporation, an entry of transfer to it shall be made on its books, and, thereupon, the original certificate shall be void. While the stock remains the property of the corporation, no dividends shall be declared nor instalments paid upon it; but it shall remain subject to the control of the corporation according to its by-laws.

### Officers.

**Sec. 17. Officers.** The business of every corporation shall be managed and conducted by a president, a board of not less than three directors, a clerk, a treasurer,

and such other officers and such agents as the corporation by its by-laws shall authorize.

**Sec. 18. Election of officers.** The directors, the treasurer, the clerk, and such other officers as the by-laws may prescribe shall be elected annually by the stockholders by ballot, and the president shall be elected annually by and from the board of directors. Every director, unless the by-laws otherwise provide, shall be a stockholder. The treasurer may be required to give a bond for the faithful performance of his duty in such sum and with such sureties as the by-laws may prescribe. The clerk, who shall be a resident of this commonwealth, shall be sworn and shall record all votes of the corporation in a book to be kept for that purpose. Every corporation may, by its articles of organization or by an amendment to such articles adopted as hereinafter provided, divide its directors into classes and prescribe the tenure of office of the several classes; but no class shall be elected for a shorter period than one year or for a longer period than five years, and the term of office of at least one class shall expire in each year. Except as herein otherwise provided, the officers of a corporation shall hold office for one year and until their successors are chosen and qualified. The manner of choosing or of appointing all other agents and officers and of filling all vacancies shall be prescribed by the by-laws, and, in default of such by-law, vacancies may be filled by the board of directors.

**Sec. 19. Powers of board of directors; executive committee.** The board of directors may exercise all the powers of the corporation, except such as are conferred by law, or by the by-laws of the corporation, upon the stockholders. A corporation may, by its by-laws, provide for an executive committee to be elected from and by its board of directors. To such committee may be delegated the management of the current and ordinary business of the corporation, and such other duties as the by-laws may prescribe.

### Meetings.

**Sec. 20. Meetings of stockholders.** There shall be an annual meeting of the stockholders and the time and place of holding it, and the manner of conducting it, shall be fixed by the by-laws; but it shall be held within ninety days after the end of the fiscal year of the corporation. All meetings of stockholders shall be held in the commonwealth. A written or printed notice, stating the place, day and hour thereof, shall be given by the clerk, at least seven days before such meeting, to each stockholder by leaving such notice with him or at his residence or usual place of business, or by mailing it, postage prepaid, and addressed to each stockholder at his address as it appears upon the books of the corporation. Unless the by-laws otherwise provide, a majority in interest of all stock issued and outstanding and entitled to vote shall constitute a quorum. Notices of all meetings of stockholders shall state the purposes for which the meetings are called. No notice of the time, place or purpose of any regular or special meeting of the stockholders shall be required if every stockholder, or his attorney thereunto authorized, by a writing which is filed with the records of the meeting, waives such notice.

This section has been affected by c. 222 of the Acts of 1905, as follows:

**Sec. 1.** Every foreign and domestic corporation subject to the provisions of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three shall, whenever any change is made altering the date fixed in the by-laws for the annual meeting of the corporation, file in the office of the commissioner of corporations a certificate of such change, signed and sworn to by the clerk of the corporation.

**Sec. 2.** This act shall take effect upon its passage.

**Sec. 21. Stockholders' meeting called by justice of the peace.** If, by reason of the death or absence of the officers of a corporation or other cause, there is no person duly authorized to call or preside at a legal meeting, or if the clerk or other officer refuses or neglects to call it, a justice of the peace may, upon written application of three or more of the stockholders, issue a warrant to any one of them, directing him to call a meeting by giving such notice as is required by law, and may, by the same warrant, direct him to preside at the meeting until a clerk is duly chosen and qualified, if no officer of the corporation is present who is legally authorized to preside.

**Sec. 22. Special meetings.** Special meetings of the stockholders may be called by the president or by a majority of the directors, and shall be called by the clerk upon written application of three or more stockholders who are entitled to vote and who hold at least one-tenth part in interest of the capital stock, stating the time, place, and purpose of the meeting.

**Sec. 23. Voting rights of corporations.** No corporation shall, directly or indirectly, vote upon any share of its own stock.

**Sec. 24. Voting powers of stockholders; proxies.** Stockholders who are entitled to vote shall, except as provided in section ninety-three, have one vote for each share of stock owned by them. Capital stock shall not be voted upon if any instalment of the subscription therefor which has been duly demanded under the provisions of section sixteen is overdue and unpaid. Stockholders may vote either in person or by proxy. No proxy which is dated more than six months before the meeting named therein shall be accepted, and no such proxy shall be valid after the final adjournment of such meeting.

**Sec. 25. Directors' meetings.** Meetings of the board of directors may be held within or without the commonwealth. Any meeting of the board of directors shall be a legal meeting without notice if each director, by a writing which is filed with the records of the meeting, waives such notice.

### Stock.

**Sec. 26. Stock certificates.** Each stockholder shall be entitled to a certificate, in form conformable to the provisions of section fourteen, which shall be signed by the president and by the treasurer of the corporation, shall be sealed with its seal and shall certify the number of shares owned by him in such corporation. Each certificate of stock which by the agreement of association or amended agreement of association or, in the case of a corporation created by special law, by its articles of organization is limited as to its voting rights, or which is preferred as to its dividend or as to its share of the principal upon dissolution, shall have a sufficient statement of such limitation or preference plainly written or stamped upon it, and each certificate subsequently issued of any class of stock in the corporation shall have printed or stamped thereon the clause of such agreement of association or amended agreement of association or articles of organization authorizing the issue of stock in any respect preferred or limited.

**Sec. 27. Classes of stock.** Every corporation may create two or more classes of stock with such preferences, voting powers, restrictions and qualifications thereof as shall be fixed in the agreement of association or, in the case of a corporation created by special law, in the articles of organization, or in an amendment to said agreement or articles which may be adopted as hereinafter provided.

**Sec. 28. Transfer of stock.** The delivery of a certificate of stock by the person named as the stockholder in such certificate or by a person entrusted by him with its possession for any purpose to a bona fide purchaser or pledgee for value, with a written transfer thereof, or with a written power of attorney to sell, assign or transfer the same, signed by the person named as the stockholder in such certificate, shall be a sufficient delivery to transfer title as against all persons; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or to treat the holder of record as the holder in fact, until it has been recorded upon the books of the corporation, or until a new certificate has been issued to the person to whom it has been so transferred. Such purchaser, upon delivery of the former certificate to the treasurer of the corporation, shall be entitled to receive a new certificate. Stock shall not be transferred upon the books of the corporation, except as provided in section sixteen, if any instalments thereon remain overdue and unpaid. A pledgee of stock transferred as collateral security shall be entitled to a new certificate if the instrument of transfer substantially describes the debt or duty which is intended to be secured thereby. Such new certificate shall express on its face that it is held as collateral security, and the name of the pledgor shall be stated thereon, who alone shall be liable as a stockholder, and entitled to vote thereon.

**Sec. 29. Voting rights of fiduciary holders of stock.** Executors, administrators, guardians, trustees, or persons in any other representative or fiduciary capacity may vote as stockholders upon stock held in such capacity.

**Sec. 30. Stock books; corporate records.** The agreement of association, an attested copy of the articles of organization or of articles in amendment of said agreement or of said articles and of the by-laws, with a reference on the margin of the copy of the by-laws to all amendments thereof, and a true record of all meetings of stockholders shall be kept by every corporation at its principal office in this commonwealth for the inspection of its stockholders. The stock and transfer books

of every corporation, which shall contain a complete list of all stockholders, their residences and the amount of stock held by each, shall be kept at an office of the corporation in this commonwealth for the inspection of its stockholders. Said stock and transfer books and said attested copies and records shall be competent evidence in any court of this commonwealth. If any officer or agent of a corporation having charge of such copies, books or records refuses or neglects to exhibit them or to submit them to examination as aforesaid, he or the corporation shall be liable to any stockholders for all actual damages sustained by reason of such refusal or neglect, and the supreme judicial court or the superior court shall have jurisdiction in equity, upon petition of a stockholder, to order any or all of said copies, books or records to be exhibited to him and to such other stockholders as may become parties to said petition, at such a place and time as may be designated in the order.

**Sec. 31. Lost certificates.** The directors of a corporation may, unless otherwise provided by the by-laws, determine the conditions upon which a new certificate of stock may be issued in place of any certificate which is alleged to have been lost or destroyed. They may, in their discretion, require the owner of a lost or destroyed certificate, or his legal representative, to give a bond with sufficient surety to the corporation in a sum not exceeding double the market value of the stock to indemnify the corporation against any loss or claim which may arise by reason of the issue of a certificate in place of such lost or destroyed stock certificate.

**Sec. 32. Unclaimed dividends.** Every corporation shall, once in every five years, publish three times successively in a newspaper in the city of Boston, and also in a newspaper in the county in which the principal office of the corporation is located, a list of all dividends which have remained unclaimed for two years or more and the names of the persons to whose credit such dividends stand.

### **Stockholders' and directors' liability.**

**Sec. 33. Liability of stockholders.** The stockholders of a corporation which reduces its capital stock contrary to the provisions of section forty-three shall be liable for the payment of the debts and contracts of the corporation existing at the time of such reduction to the extent of the amount withdrawn and paid to them respectively. The stockholders of a corporation shall also be liable for all money due to operatives for services rendered within six months before demand made upon the corporation and its neglect or refusal to make such payment. A stockholder who pays on a judgment or otherwise more than his proportion of any such debt shall have a claim for contribution against the other stockholders.

**Sec. 34. Liability of president, treasurer and directors.** The president, treasurer, and directors of every corporation shall be jointly and severally liable for all debts and contracts of the corporation contracted or entered into while they are officers thereof if any stock is issued in violation of the provisions of section fourteen, or if any statement or report which is required by the provisions of this act is made by them which is false in any material representation and which they know to be false; but only the officers who sign such statement or report shall be so liable.

**Sec. 35. Liability of directors.** The directors of every corporation shall be jointly and severally liable for the debts and contracts of the corporation in the following cases:

First. For declaring or assenting to a dividend if the corporation is, or thereby is rendered, bankrupt or insolvent, to the extent of such dividend.

Second. For debts contracted between the time of making or assenting to a loan to a stockholder or director and the time of its repayment, to the extent of such loan.

Directors who vote against declaring said dividend or who vote against making said loan shall not be liable as aforesaid.

**Sec. 36. Enforcement of liability.** A stockholder or officer in a corporation shall not be held liable for its debts or contracts unless it has been duly adjudicated bankrupt or unless a judgment has been recovered against it and it has neglected, for thirty days after demand made on execution, to pay the amount due, with the officer's fees, or to exhibit to the officer real or personal property belonging to it and subject to be taken on execution, sufficient to satisfy the same, and the execution has been returned unsatisfied. After such adjudication of bankruptcy or after the execution has been so returned, the clerk, or other officer who has charge of the records of such corporation, upon request of a creditor of the corporation or of his

attorney, shall furnish to him a certified list of the names of all persons who were officers and stockholders in such corporation at the time when the liability to be enforced against them personally accrued. The supreme judicial court or the superior court shall have jurisdiction in equity to compel such list to be furnished. After an adjudication of bankruptcy or after the execution has been so returned, any creditor may file a bill in equity in the supreme judicial court or the superior court in behalf of himself and of all other creditors of the corporation, against it and all persons who are liable to the plaintiff as stockholders or officers for the recovery of the money due from the corporation to himself and to the other creditors for which the stockholders or officers may be personally liable by reason of any act or omission on the part of the corporation or any of the other defendants, setting forth the bankruptcy of the corporation, or the judgment and proceedings thereon, and the grounds upon which it is expected to charge the stockholders or officers personally.

**Sec. 37. Procedure.** Such suit shall not be discontinued by the plaintiff except by order of the court after notice to other creditors. It shall not abate by reason of the non-joinder of persons liable as defendants, unless the plaintiff, after notice by plea or answer of their existence, unreasonably neglects to make them parties; nor shall it abate by reason of the death of a defendant, but his estate shall be liable in the hands of his executor or administrator, who may voluntarily appear, or who may be summoned by the plaintiff, to defend the suit.

**Sec. 38. Apportionment of assessment.** Such sums as may be decreed to be paid by the stockholders in such suit shall be assessed upon them in proportion to the amounts of stock held by them respectively at the time when their liability accrued; but a stockholder shall not be liable to pay a larger amount than the amount of stock held by him at that time at its par value as fixed at the time when the liability to be enforced against him personally accrued.

**Sec. 39. Defence of actions by stockholders.** If, in an action against a corporation, it appears to the court that one of the purposes of the action is to obtain a judgment against the corporation in order to enforce an alleged liability of a person who has been or is a stockholder or officer thereof, such stockholder or officer may be permitted, on petition, to defend such action, and the court may require of him, or of a person in his behalf, a bond with sufficient surety or sureties conditioned to pay to the plaintiff all costs which may accrue and be taxed to him after the filing of said petition.

### Amendments after organization.

**Sec. 40. Changes in agreement of association and articles of organization; sale of assets.** Every corporation may, at a meeting duly called for the purpose, by the vote of a majority of all its stock, or, if two or more classes of stock have been issued, of a majority of each class outstanding and entitled to vote, authorize an increase or a reduction of its capital stock and determine the terms and manner of the disposition of such increased stock, may authorize a change of the location of its principal office or place of business in this commonwealth or a change of the par value of the shares of its capital stock, or may authorize proceedings for its dissolution under the provisions of section fifty-one.

It may, at a meeting duly called for the purpose, by the vote of two-thirds of all its stock, or, if two or more classes of stock have been issued, of two-thirds of each class of stock outstanding and entitled to vote, or by a larger vote if the agreement of association so requires, change its corporate name, the nature of its business, the classes of its capital stock subsequently to be issued and their voting power, or make any other lawful amendment or alteration in its agreement of association or articles of organization, or sell, lease, or exchange all its property and assets, including its good will and its corporate franchise, upon such terms and conditions as it deems expedient.

[As to the increase of the capital stock of trust companies, see Acts, 1905, c. 189.]

**Sec. 41. Articles of amendment.** Articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors shall, within thirty days after said meeting, be prepared, setting forth such amendment or alteration, and stating that it has been duly adopted by the stockholders. Such articles shall be submitted to the commissioner of corporations, who shall examine them in the same manner as the original articles of organization. If he finds that they conform

to the requirements of law, he shall so certify and indorse his approval thereon, and they shall thereupon be filed in the office of the secretary of the commonwealth, who, upon payment of the fee hereinafter provided, shall cause them, and the indorsement thereon, to be recorded. No amendment or alteration of the agreement of association or articles of organization shall take effect until said articles of amendment shall have been filed in the office of the secretary of the commonwealth as aforesaid.

**Sec. 42. Increase of capital stock.** If an increase in the total amount of the capital stock of any corporation shall have been authorized by vote of its stockholders in accordance with the provisions of section forty, the articles of amendment shall also set forth: a) The total amount of capital stock already authorized; b) The amount of stock already issued for cash payable by instalments and the amount paid thereon; and the amount of full paid stock already issued for cash, property, services or expenses; c) The amount of additional stock authorized; d) The amount of such stock to be issued for cash, property, services, or expenses, respectively; e) A description of said property and a statement of the nature of said services or expenses, in the manner required by the provisions of section eleven.

**Sec. 43. Reduction of capital stock.** If a reduction of the capital stock of any corporation shall have been authorized by its stockholders in accordance with the provisions of section forty, the articles of amendment shall also set forth a) The total amount of capital stock already authorized and issued; b) The amount of the reduction and the manner in which it shall be effected; c) A copy of the vote authorizing the reduction. No reduction of capital stock shall be lawful which renders the corporation bankrupt or insolvent, but the capital stock may be reduced by the surrender by every stockholder of his shares and the issue to him in lieu thereof of a proportional decreased number of shares, if the assets of such corporation are not reduced thereby, without creating any liability of the stockholders of such corporation in case of the subsequent bankruptcy of such corporation.

**Sec. 44. Remedy of minority stockholder.** A stockholder in any corporation which shall have duly voted to sell, lease, or exchange all its property and assets or to change the nature of its business in accordance with the provisions of section forty, who, at the meeting of stockholders, has voted against such action may, within thirty days after the date of said meeting, make a demand in writing upon the corporation for payment for his stock. If the corporation and the stockholder cannot agree upon the value of the stock at the date of such sale, lease, exchange, or change, such value shall be ascertained by three disinterested persons, one of whom shall be named by the stockholder, another by the corporation and the third by the two thus chosen. The finding of the appraisers shall be final, and if their award is not paid by the corporation within thirty days after it is made, it may be recovered by the stockholder from the corporation in an action of contract. Upon payment by the corporation to the stockholder of the agreed or awarded price of his stock, the stockholder shall forthwith transfer and assign the stock certificates held by him at, and in accordance with, the request of the corporation.

### **Annual reports.**

**Sec. 45. Form of annual report of condition.** Every corporation shall annually, within thirty days after the date fixed in its by-laws for its annual meeting last preceding the date of such report, or within thirty days after the final adjournment of said meeting, but not more than three months after the date so fixed for said meeting, prepare a report of condition which shall be signed and sworn to by its president, treasurer and at least a majority of its directors stating: 1. The name of the corporation; 2. The location (with street address) of its principal office in this commonwealth, and elsewhere in the case of a corporation organized to do business wholly outside the commonwealth; 3. The date of its last preceding annual meeting; 4. The total amount of its authorized capital stock; the amount issued and outstanding and the amount then paid thereon; the class or classes, if any, into which it is divided; the par value and number of its shares; 5. The names and addresses of all the directors and officers of the corporation, and the date at which the term of office of each expires; 6. A statement of the assets and liabilities of the corporation as of the date of the end of its last fiscal year, to be made substantially in the following form:

**Assets.**

Real estate, . . . . .	
Machinery, . . . . .	
Merchandise:	
<i>Manufactures, merchandise, material and stock in process</i>	
Cash and debts receivable, . . . . .	
Patent rights, . . . . .	
Trade marks, . . . . .	
Good will, . . . . .	
Profit and loss, . . . . .	
Total, . . . . .	

**Liabilities.**

Capital stock, . . . . .	
Accounts payable, . . . . .	
Funded indebtedness, . . . . .	
Floating indebtedness, . . . . .	
Surplus, . . . . .	
Profit and loss, . . . . .	
Total, . . . . .	

**Sec. 46. Filing of annual report.** Such report shall be submitted to the commissioner of corporations, who shall examine it and if he finds that it conforms to the requirements of this act, he shall indorse his approval thereon; and upon the payment of the fee hereinafter provided, it may be filed in the office of the secretary of the commonwealth, who shall receive and preserve it in book form convenient for reference and open to public inspection.

**Sec. 47. Verification by auditor.** Such report of a corporation which has a capital stock of one hundred thousand dollars or more shall be accompanied by a written statement under oath by an auditor to be employed for each ensuing fiscal year by a committee of three stockholders who are not directors which shall be selected at each annual meeting of the stockholders, or, if there are not three stockholders other than directors able and willing to serve on such committee, then to be employed by the directors, stating that such report represents the true condition of the affairs of said corporation as disclosed by its books at the time of making such audit; but no bookkeeper, treasurer, or other officer of the corporation who shall sign and execute the statement shall be appointed as auditor within the meaning of this act. The statement of the auditor shall be filed by him with said report in the office of the secretary of the commonwealth and shall be attached to and form part of it. The auditor shall be sworn to the faithful performance of his duties by a justice of the peace or some other magistrate authorized to administer oaths or affirmations; and the officers of the corporation who sign the said report of condition shall certify thereon that the auditor was duly elected and qualified, as herein provided.

**Sec. 48. Annual tax return.** Every corporation shall annually, between the first and tenth days of May, make a return to the tax commissioner, under the oath of its treasurer, stating the name of the corporation and setting forth as of the first day of May of the year in which the return is made: 1. The total authorized amount of the capital stock of the corporation; the amount issued and outstanding and the amount then paid thereon; the classes, if any, into which it is divided, the par value and number of its shares; the market value of the shares of its stock, or of each class of its stock if there are two or more classes; 2. A statement in such detail as the tax commissioner may require of the real estate, machinery, merchandise, and other assets belonging to the corporation within and without the commonwealth; 3. A complete list of the stockholders of the corporation, their residences and the amount and class of stock, if more than one, belonging to each. If stock is held as collateral security, the list shall state the name and residence of the pledgor and of the pledgee. Such return shall be filed by the tax commissioner, and shall be open only to the inspection of the tax commissioner, his clerks and assistants, and such other officers of the commonwealth as may have occasion to inspect it for the purpose of assessing or of collecting taxes.

**Sec. 49. Penalty for failure to file report of condition or tax return.** If a corporation fails to file its report of condition within thirty days after the date of its

annual meeting or of a final adjournment thereof, or its tax return before the tenth day of May of each year, the commissioner of corporations or the tax commissioner, as the case may be, shall give notice by mail, postage prepaid, to such corporation of its default. If it omits to file such report or return within thirty days after such notice of default has been given, it shall forfeit to the commonwealth not less than five nor more than ten dollars for each day for fifteen days after the expiration of the said thirty days, and not less than ten nor more than two hundred dollars for each day thereafter during which such default continues or any other sum, not greater than the maximum penalty or forfeiture, which the court may deem just and equitable. If a corporation fails for two successive years to file its annual report of condition, the supreme judicial court, upon application by the commissioner of corporations, after notice and a hearing, may decree a dissolution of the corporation.

**Sec. 50. Enforcement of penalties.** Penalties or forfeitures incurred by any corporation which, being subject to the provisions of this act, omits to cause any certificate or return which may be required by the provisions of sections forty-five, forty-eight, sixty, and sixty-six, to be duly filed may be recovered in an action brought in the county of Suffolk in the name of the commonwealth, or they may be recovered by an information in equity in the name of the attorney-general at the relation of the tax commissioner or commissioner of corporations, as the case may be, brought in the supreme judicial court in the county of Suffolk. Upon such information, the court may issue an injunction restraining the further prosecution of the business of the corporation named therein until such penalties or forfeitures, with interest and costs, have been paid, and until returns and certificates required by this act have been filed.

### Dissolution of corporations.

**Sec. 51. Dissolution of corporations.** A corporation which desires<sup>§</sup> to close its affairs may, unless otherwise provided in the agreement of association,<sup>§</sup> by the vote of a majority of all its stock, or, if two or more classes of stock have been issued, of a majority of each class outstanding and entitled to vote, authorize a petition for its dissolution to be filed in the supreme judicial court or in the superior court setting forth in substance the grounds of the application; and the court, after notice to parties interested and a hearing, may decree a dissolution of the corporation. A corporation so dissolved shall be held to be extinct in all respects as if its corporate existence had expired by the limitation of its charter.

**Sec. 52. Continuation for three years to close affairs.** Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property, and to divide its capital stock, but not for the purpose of continuing the business for which it was established.

**Sec. 53. Receivers.** If the charter of a corporation expires or is annulled, or if the corporation is dissolved, or if a judgment has been recovered against it, and it has neglected, for thirty days after demand made on execution, to pay the amount due, with the officer's fees, or to exhibit to the officer real or personal property belonging to it and subject to be taken on execution, sufficient to satisfy the same, and the execution has been returned unsatisfied, the supreme judicial court or the superior court shall have jurisdiction in equity upon application of a creditor or stockholder to appoint one or more receivers to take charge of its estate and effects and to collect the debts and property due and belonging to it; with power to prosecute and defend suits in its name or otherwise, to appoint agents under them and to do all other acts which might be done by such corporation, if in being, which may be necessary for the final settlement of its unfinished business. The powers of such receivers and the existence of the corporation may be continued as long as the court finds necessary for said purposes.

**Sec. 54. Payment of debts and distribution of surplus.** The receivers shall pay all debts due from the corporation if the funds in their hands are sufficient therefor; and if they are not, they shall distribute them ratably among the creditors who prove their debts in the manner directed by any decree of the court for that purpose.



If there is a balance remaining after the payment of the debts, the receivers shall distribute and pay it to those who are justly entitled thereto as having been stockholders of the corporation, or their legal representatives.

**Sec. 55. Returns to secretary of dissolution.** If a corporation is dissolved or annulled the clerk of the court in which the decree therefor has been entered shall forthwith make return thereof to the secretary of the commonwealth, giving the name of the corporation dissolved or annulled and the date upon which such decree was entered.

### **Foreign corporations.**

**Sec. 56. Foreign corporations defined.** The term "foreign corporation" as used in this act shall mean every corporation, association or organization which has been established, organized or chartered under laws other than those of the commonwealth for purposes for which domestic corporations may be organized under the provisions of section seven.

**Sec. 57. Limitation of business.** No such foreign corporation shall engage or continue in any kind of business in this commonwealth the transaction of which by domestic corporations is not permitted by the laws of this commonwealth.

**Sec. 58. Appointment of attorney.** Every such foreign corporation which has a usual place of business in this commonwealth, or which is engaged in this commonwealth, permanently or temporarily, and with or without a usual place of business therein, in the construction, erection, alteration or repair of a building, bridge, railroad, railway or structure of any kind, shall, before doing business in this commonwealth, in writing appoint the commissioner of corporations and his successor in office to be its true and lawful attorney upon whom all lawful processes in any action or proceeding against it may be served, and in such writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on it, and that the authority shall continue in force so long as any liability remains outstanding against it in this commonwealth. The power of attorney and a copy of the vote authorizing its execution, duly certified and authenticated, shall be filed in the office of the commissioner, and copies certified by him shall be sufficient evidence thereof. Service of such process shall be made by leaving a copy of the process and a fee of two dollars in the hands or in the office of the commissioner, and such service shall be sufficient service upon the corporation.

**Sec. 59. Notice of process.** When legal process against any such corporation has been served upon the commissioner, he shall immediately give notice to the corporation of such service by mail, postage prepaid, directed, in the case of a corporation established in a foreign country, to the resident manager, if any, in the United States; and shall, within two days after such service, in the same manner forward a copy of the process served upon him to such corporation or manager, or to any other person designated by the corporation by written notice filed in the office of the commissioner. The fee of two dollars paid by the plaintiff to the commissioner at the time of the service shall be taxed in his costs, if he prevails in the suit. The commissioner shall keep a record of the day and hour of the service of all such processes.

**Sec. 60. Copy of charter, by-laws and certificate to be filed.** Every foreign corporation, of the classes described in section fifty-eight, before transacting business in this commonwealth, shall, upon payment of the fee hereinafter provided, file with the commissioner of corporations a copy of its charter, articles, or certificate of incorporation, certified under the seal of the state or country in which such corporation is incorporated by the secretary of state thereof or by the officer having charge of the original record therein, a true copy of its by-laws, and a certificate in such form as the commissioner of corporations may require, setting forth a) The name of the corporation; b) The location of its principal office; c) The names and the addresses of its president, treasurer, clerk, or secretary, and of the members of its board of directors; d) The date of its annual meeting for the election of officers; e) The amount of its capital stock, authorized and issued, the number and par value of its shares, the amount paid in thereon to its treasurer, and, if any part of such payment has been made otherwise than in money, of the details of such payment, so far as practicable, in accordance with the provisions of section eleven. Said certificate shall be subscribed and sworn to by its president, treasurer, and

by a majority of its directors or officers having the powers usually exercised by directors. The officers and directors of such corporation shall be subject to the same penalties and liabilities for false and fraudulent statements and returns as officers and directors of a domestic corporation subject to this act. Every officer of such a corporation which fails to comply with the requirements of this section and of sections fifty-eight and sixty-six, and every agent thereof who transacts business as such in this commonwealth shall, for such failure, be liable to a fine of not more than five hundred dollars. Such failure shall not affect the validity of any contract with such corporation, but no action shall be maintained or recovery had in any of the courts of this commonwealth by any such foreign corporation so long as it fails to comply with the requirements of said sections.

**Sec. 61. Investigation as to kind of business to be done.** The commissioner of corporations shall refuse to accept or file the charter, certificate or other papers of, or accept appointment as attorney for service for, any such corporation which does a business in this commonwealth the transaction of which by domestic corporations is not then permitted by the laws of this commonwealth.

**Sec. 62. Foreign corporations may be sued and their property attached.** Foreign corporations which have property in this commonwealth shall be liable to be sued and to have their property attached in the same manner and to the same extent as natural persons who are residents of other states and who have property in this commonwealth. The service of the writ shall be made in the manner provided in chapters one hundred and sixty-seven and one hundred and seventy of the revised laws, with such further service as the court to which the writ is returnable may order.

**Sec. 63. Foreign corporations may hold real estate.** Foreign corporations organized for any purpose for which domestic corporations may be organized under the provisions of section seven, which have complied with the provisions of sections fifty-eight and sixty, may purchase and hold such real estate in this commonwealth as may be necessary for conducting their business.

**Sec. 64. Issue of stock on domestic franchises regulated.** If a foreign corporation which owns or controls a majority of the capital stock of a domestic street railway, gas light, or electric light corporation, issues stock, bonds, or other evidences of indebtedness based upon or secured by the property, franchise, or stock of such domestic corporation, unless such issue is authorized by the laws of this commonwealth, the supreme judicial court shall have jurisdiction in equity in its discretion to dissolve such domestic corporation. If it appears to the attorney-general that such issue has been made, he shall institute proceedings for the dissolution of such corporation and for the proper disposition of its assets. The provisions of this section shall not affect the right of foreign corporations, their officers, or agents, to issue stock and bonds in fulfilment of contracts existing on the fourteenth day of July in the year eighteen hundred and ninety-four.

**Sec. 65. Certificate of increase or decrease of capital.** All foreign corporations of the classes described in section fifty-eight, and such foreign corporations as are engaged in the business of selling or negotiating bonds, mortgages, notes, or other choses in action, shall, within thirty days after the payment in of an increase of capital stock, upon payment of the fee hereinafter provided, file in the office of the secretary of the commonwealth a certificate of the amount of such increase and the fact of such payment, signed and sworn to by its president, treasurer, and a majority of its directors or officers having the powers usually exercised by directors. Within thirty days after the vote of such corporation authorizing a reduction of its capital stock, a copy of such vote, signed and sworn to by the clerk of the corporation, shall, upon payment of the fee hereinafter provided, be filed in the office of the secretary of the commonwealth.

**Sec. 66. Annual certificate of condition.** Every foreign corporation of the classes described in section fifty-eight shall annually, within thirty days after the date fixed for its annual meeting last preceding the date of such certificate, or within thirty days after the final adjournment of said meeting, but not more than three months after the date so fixed for said meeting, prepare and file in the office of the secretary of the commonwealth, upon payment of the fee hereinafter provided, a certificate signed and sworn to by its president, treasurer, and by a majority of its board of directors showing the amount of its authorized capital stock, and its assets, and liabilities as of a date not more than ninety days prior to said annual

meeting, in such form as is required of domestic corporations under the provisions of section forty-five, and the change or changes, if any, in the other particulars included in the certificate required by section sixty made since the filing of said certificate or of the last annual report.

**Sec. 67. Approval of certificate.** A certificate which is required to be filed by the preceding section shall be accompanied by a written statement under oath by an auditor, as provided in section forty-seven, except that such auditor shall in all cases be chosen by the board of directors. Before it is filed, it shall be submitted to the commissioner of corporations who shall examine said certificate, and shall, as tax commissioner, assess upon the corporation an excise tax, in accordance with the provisions of section seventy-five. If he finds that the certificate is in compliance with the requirements of the preceding section, he shall indorse his approval thereon; but no certificate shall be filed until he has indorsed his approval thereon and until the excise tax required by section seventy-five has been paid to the treasurer and receiver general.

**Sec. 75** reads as follows: Every foreign corporation of the classes described in section fifty-eight shall, in each year, at the time of filing its annual certificate of condition, pay to the treasurer and receiver general, for the use of the Commonwealth, an excise tax to be assessed by the tax commissioner of one fiftieth of one per cent of the par value of its authorized capital stock as stated in its annual certificate of condition; but the amount of such excise tax shall not in any one year exceed the sum of two thousand dollars.

**Sec. 68. Penalty for not filing certificate.** If a foreign corporation of the classes described in section fifty-eight, omits to file the certificate required by section sixty-six, the commissioner of corporations shall give notice to the corporation of its default, by mail, postage prepaid, directed to the resident manager, if any, in the United States, or to any other person designated by the corporation, by written notice filed in the office of the commissioner, as provided in section fifty-nine for notice of the service of legal process. If it fails to file such certificate within thirty days after such notice of default has been mailed, it shall forfeit to the commonwealth not less than five nor more than ten dollars for each day for fifteen days after the expiration of the said thirty days, and not less than ten nor more than two hundred dollars for each day thereafter during which such omission continues, or any other sum, not greater than the maximum penalty or forfeiture, which the court may deem just and equitable, which shall be recovered as provided in section fifty.

**Sec. 69. Notice to delinquent corporation.** The commissioner of corporations, upon the failure of any such corporation to file the certificate required by section sixty-six, shall forthwith notify such corporation, and the notice shall contain a copy of this and the four preceding sections and of section fifty.

**Sec. 70. Liability of officers and its enforcement.** The officers of foreign corporations of the classes described in section fifty-eight shall be jointly and severally liable for all the debts and contracts of the corporation contracted or entered into while they are officers thereof, if any statement or report which is required by the provisions of this act is made by them which is false in any material representation, and which they know to be false; but only the officers who sign such statement or report shall be so liable. Such liability shall be enforced upon the conditions and in the manner prescribed by sections thirty-six, thirty-seven and thirty-nine.

## Taxation.

[Secs 71—87. Relate to taxation.]

## Organization and filing fees.

**Sec. 88. Fees for organization papers.** The fee for filing and recording the articles of organization required by section eleven, including the issuing by the secretary of the commonwealth of the certificate of incorporation, shall be one twentieth of one per cent of the total amount of the authorized capital stock as fixed by the articles of organization; but not in any case less than twenty-five dollars.

**Sec. 89. For increase of capital.** The fee for filing and recording the certificate required by section forty-two providing for an increase of capital stock shall be one twentieth of one per cent of the amount by which the capital is increased.

**Sec. 90. For other certificates, statements, and reports.** The fees for filing all other certificates, statements, or reports required by law shall be five dollars

for each certificate, statement, or report, but no fee shall be paid for filing the annual tax return required by section forty-eight. Fees for official copies of any of the records referred to in this act shall be at the rates now fixed by chapter two hundred and four of the Revised Laws for copies of similar records furnished by the secretary of the commonwealth.

**Sec. 91. Fees for foreign corporations.** Every foreign corporation which is subject to the provisions of this act shall pay to the officers hereinafter designated the following fees: for filing a copy of its charter, by-laws, and the certificate required by section sixty, twenty-five dollars to the treasurer and receiver general. For filing all other certificates and statements, including the annual certificate of condition required by section sixty-six, five dollars to the secretary of the commonwealth.

### Miscellaneous provisions.

**Sec. 92. Fishing associations.** A corporation which is organized for the purpose of opening outlets, canals, sluiceways or ditches for the introduction and propagation of herrings and alewives, before making any purchase of real estate or doing any acts in pursuance of its organization, shall obtain the authority in writing of the mayor and aldermen of the city, or of the selectmen of the town within which its works are to be located, and, within thirty days after obtaining such authority, shall file a copy thereof, certified by the city or town clerk, in the office of the secretary of the commonwealth.

**Sec. 93. Co-operative associations.** A corporation which is organized for the purpose of co-operation in carrying on any business and of co-operative trade shall distribute its earnings or profits among its workmen, purchasers and stockholders at such times and in such manner as its by-laws shall prescribe, but as often at least as once in twelve months. No distribution shall be made unless at least ten per cent of the net profits have been appropriated for a contingent or sinking fund until an amount has accumulated equal to thirty per cent. of its capital stock. No person shall hold shares in any such corporation to an amount exceeding one thousand dollars at their par value, nor shall a stockholder be entitled to more than one vote upon any subject.

**Sec. 94. Free beds in hospitals.** A manufacturing corporation may, by the vote of a majority of all its stock, or if two or more classes of stock have been issued, of a majority of each class outstanding and entitled to vote, appropriate not more than five thousand dollars, or an annual sum of not more than five hundred dollars, for the support of free beds in one or more hospitals in this Commonwealth for the use of its employees.

### Repeal.

**Sec. 95. Repeal. Partial repeal.** Sections forty-nine, fifty, fifty-one, fifty-two, and sixty-nine of chapter fourteen of the revised laws are hereby repealed. Sections thirty-seven, thirty-eight, thirty-nine, forty, forty-two, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty, sixty-one, sixty-two, sixty-three, sixty-six, sixty-seven, and sixty-eight of chapter fourteen, and chapters one hundred and nine, one hundred and ten and one hundred and twenty-six except section eight of the revised laws, and chapter four hundred and forty-one of the acts of the year nineteen hundred and two, and all other acts and parts of acts inconsistent herewith, so far as they apply to corporations which are subject to the provisions of this act, are hereby repealed.

**Sec. 96. Construction of act.** The provisions of this act so far as they are the same as those of existing statutes shall be construed as a continuation thereof, and not as new enactments, and a reference in a statute which has not been repealed to provisions of law which have been revised and re-enacted herein shall be construed as applying to such provisions as so incorporated in this act. The repeal of a law by this act shall not affect any act done, ratified, or confirmed, or any right accrued or established, or any action, suit, or proceeding commenced under any of the laws repealed before the repeal took effect, but the proceedings in such case shall, when necessary, conform to the provisions of this act.

**Sec. 97. Date of taking effect.** This act shall take effect on the first day of August in the year nineteen hundred and three.

**Acts, 1905, c. 222. An Act relative to Changes in the By-laws of Business Corporations as to the Date of the Annual Meeting.**

Sec. 1. **Change in date of annual meeting.** Every foreign and domestic corporation subject to the provisions of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three shall, whenever any change is made altering the date fixed in the by-laws for the annual meeting of the corporation, file in the office of the commissioner of corporations a certificate of such change, signed and sworn to by the clerk of the corporation.

Sec. 2. This act shall take effect upon its passage.

**Acts, 1906, c. 269. An Act relative to Service of Trustee Process upon Foreign Corporations doing Business within this Commonwealth.**

In an action by trustee process in which a foreign corporation having a usual place of business within this commonwealth is designated as trustee, service of the writ upon the treasurer or other officer of such corporation shall be of the same effect and validity as if made upon the commissioner of corporations.

**Acts, 1906, c. 347. An Act relative to Foreign Banking Associations or Corporations.**

Sec. 1. No foreign banking association or corporation shall hereafter be admitted to transact business in this commonwealth until such association or corporation has received a certificate from the board composed of the bank commissioner, the treasurer, and receiver general, and the commissioner of corporations giving it authority to transact business in this commonwealth, which certificate the said board is hereby authorized to grant. Any foreign banking association or corporation transacting business in this commonwealth shall become subject to the supervision of the bank commissioner, and shall annually, within thirty days after the last business day of October, and at other times during each year on any past day to be specified by the commissioner, make to him in such form as may be prescribed by him a return, signed and sworn to by the treasurer or corresponding officer of the corporation, showing accurately the condition thereof at the close of business on said day. The president and a majority of the directors shall certify and make oath that the report is correct according to their best knowledge and belief.

Sec. 2. The bank commissioner shall, annually at least, and as much oftener as he may deem expedient, examine, either personally or by a competent examiner whom he shall appoint, every such association or corporation and thoroughly inspect and examine its affairs to ascertain its financial condition and whether it has complied with all provisions of law. The proper charges incurred by reason of any such examination shall be paid by the association or corporation examined.

Sec. 3. For the purposes aforesaid, the bank commissioner or the person making the examination shall have free access to the vaults, books, and papers of any such association or corporation, and may summon the directors, officers, or agents thereof, and such other witnesses as may be deemed necessary, for examination relative to the affairs, transactions, and condition of such association or corporation, and for that purpose is hereby empowered to administer oaths.

Sec. 4. If, upon examination, it appears that such association or corporation is insolvent, or that its capital is impaired, or that its condition is such as to render the continuance of its business hazardous to the public or to those having funds in its custody, the bank commissioner shall apply, or, if such association or corporation appears to have exceeded its powers or failed to comply with any provision of law, may apply to the supreme judicial court, which shall have jurisdiction in equity on such application, to issue an injunction restraining such association or corporation, in whole or in part, from further proceeding with its business, and to make such further order or decree as justice and equity may require. The court

may appoint one or more receivers to take possession of its property and effects, subject to such directions as may from time to time be prescribed by the court.

Sec. 5. Chapter four hundred and sixty-three of the acts of the year nineteen hundred and two is hereby repealed.

Sec. 6. This act shall take effect upon its passage.

---

### **Acts, 1906, c. 372. An Act relative to Restraining by Injunction Corporations from Transacting unauthorized Business.**

Sec. 1. Upon an information in equity in the name of the attorney-general, at the relation of the commissioner of corporations, the supreme judicial court shall have power to restrain by injunction any corporation from assuming or exercising any franchise or privilege or transacting any kind of business not authorized by the charter of such corporation and the laws of this commonwealth; and also in the same manner to restrain any foreign corporation from assuming or exercising any corporate rights, privileges or franchises in this commonwealth until the provisions of sections fifty-eight and sixty of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three and of all acts in amendment thereof have been complied with.

Sec. 2. This act shall take effect upon its passage.

---

### **Acts, 1906, c. 377. An Act relative to unauthorized Banking.**

Sec. 1. No corporation, either domestic or foreign, and no person, association, or partnership except savings banks incorporated under the laws of this commonwealth, or trust companies so incorporated prior to the first day of January in the year nineteen hundred and five, or such foreign banking corporations as may be doing business in this commonwealth and are subject to examination or supervision of the bank commissioner at the time when this act takes effect, shall hereafter make use of any sign at the place where its business is transacted having thereon any name, or other word or words indicating that such place or office is the place or office of a savings bank. Nor shall such corporation, person, association, or partnership make use of or circulate any written or printed or partly written and partly printed paper whatever, having thereon any name, or other word or words, indicating that such business is the business of a savings bank; nor shall any such corporation, person, association, or partnership receive deposits and transact business in the way or manner of a savings bank, or in such a way or manner as to lead the public to believe, or, in the opinion of the bank commissioner, as might lead the public to believe, that its business is that of a savings bank.

Sec. 2. The bank commissioner shall have authority to examine the accounts, books, and papers of any corporation, person, association, or partnership which makes a business of receiving money on deposit, in order to ascertain whether such corporation, person, association, or partnership has violated or is violating any provision of this act; and any corporation, person, association, or partnership violating any provision of this act shall forfeit to the commonwealth one hundred dollars a day for every day or part thereof during which such violation continues. Any violation of the provisions of this act shall forthwith be reported by the bank commissioner to the attorney-general. The said forfeiture may be recovered by an information or other appropriate proceeding brought in the supreme judicial court or superior court in the name of the attorney-general. Upon such information or other proceeding the court may issue an injunction restraining such corporation, person, association, or partnership from further prosecution of its business within the commonwealth during the pendency of such proceeding or for all time, and may make such other order or decree as equity and justice may require.

---

### **Acts, 1907, c. 282. An Act relative to Changes in Officers of Domestic Corporations.**

Sec. 1. **Notice of changes in officers.** Whenever any change is made in the officers of a domestic corporation subject to the provisions of chapter four hundred

and thirty-seven of the acts of the year nineteen hundred and three, the corporation shall forthwith file in the office of the commissioner of corporations a certificate of such change, signed and sworn to by the president, clerk, and a majority of its directors.

**Sec. 2. Penalties.** Any such corporation which omits to make and file a certificate as aforesaid within thirty days after such a change has been made, or which fails to keep a clerk of the corporation in this commonwealth, shall forfeit not more than five hundred dollars, to be recovered in the manner prescribed by section fifty of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three.

**Sec. 3. Penalties.** Every officer of such a corporation who fails to perform any duty imposed upon him by this act shall be liable to a fine of not more than five hundred dollars.

---

### **Acts, 1907, c. 332. An Act relative to Service on certain Foreign Corporations.**

**Sec. 1. Method of service.** In an action against a foreign corporation having its principal or a usual place of business within this commonwealth service of the summons or writ may be made according to the provisions of section thirty-six of chapter one hundred and sixty-seven of the revised laws for service in actions against domestic corporations; and such service shall be of the same effect and validity as if made upon the commissioner of corporations.

**Sec. 2. Commencement.** This act shall take effect upon its passage.

---

### **Acts, 1908, c. 483. An Act to prohibit the making of Political Contributions by Business Corporations.**

**Sec. 1. Political contributions prohibited.** No business corporation incorporated under the laws of, or doing business in this commonwealth, and no officer or agent acting in behalf of such corporation, shall pay or contribute in order to aid, promote, or prevent the nomination or election of any person to public office or in order to aid, promote, or antagonize the interests of any political party. No person shall solicit or receive such payment or contribution from such corporation.

**Sec. 2. Penalty.** Any corporation violating the provisions of this act shall be punished by a fine of not more than ten thousand dollars, and any officer, director, or agent of a corporation violating any provision of this act or authorizing such violation, shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than six months.

**Sec. 3. Saving.** Nothing in this act shall be construed as affecting the provisions of chapter five hundred and eight-one of the acts of the year nineteen hundred and seven.

---

## **Michigan.**

### **Constitution.**

---

#### **Article XII. Corporations.**

**Sec. 2.** Corporations may be formed under general laws, but shall not be created, nor shall any rights, privileges, or franchises be conferred upon them, by special act of the legislature. All laws heretofore or hereafter passed by the legislature for the formation of, or conferring rights, privileges, or franchises upon corporations and all rights, privileges, or franchises conferred by such laws may be amended, altered, repealed, or abrogated.

**Sec. 2.** The term "corporation" as used in this article shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and be subject to be sued in all courts in like cases as natural persons.

Sec. 3. No corporation shall be created for a longer period than thirty years, except for municipal, railroad, insurance, canal, or cemetery purposes, or corporations organized without any capital stock for religious, benevolent, social, or fraternal purposes; but the legislature may provide by general laws, applicable to any corporations, for one or more extensions of the term of such corporations, while such term is running, not exceeding thirty years for each extension, on the consent of not less than two-thirds of the capital stock of the corporation; and by like general laws for the corporate reorganization for a further period, not exceeding thirty years, of such corporations whose terms have expired by limitation, on the consent of not less than four-fifths of the capital stock.

Sec. 4. The stockholders of every corporation and joint stock association shall be individually liable for all labor performed for such corporation or association.

Sec. 5. No corporation shall hold any real estate for a longer period than ten years, except such real estate as shall be actually occupied by such corporation in the exercise of its franchises.

Sec. 6. The legislature shall pass no law renewing or extending any special act of incorporation heretofore granted.

### Statutes.

#### Comp. Laws, 1897.

#### Winding-up of mining and manufacturing corporations.

Sec. 7083. **Corporate existence, how companies may end.** Any corporation heretofore or hereafter to be organized under the laws of this state for the purpose of carrying on the business of mining, smelting, or manufacturing, under general acts of the legislature authorizing such organization, or under any special act of the legislature organizing such corporation, whose term of existence as fixed by its articles of association or organization or by such special act, and whose further term for winding-up its business allowed by the laws of this state has expired or shall expire (no other valid proceedings having been completed to wind-up its corporate affairs) may be wound up and its assets disposed of and distributed pursuant to the provisions of this act: Provided, that nothing in this act contained shall be construed to prevent the reorganization or the extension of the renewal of the corporate term on the part of corporations authorized by law so to act, nor to affect or impair the organization rights of property of any de facto corporation actively carrying on its proper business.

Sec. 7084. **Stockholders may file bill in chancery.** Any stockholder (whether his title to the stock be legal, equitable, absolute, or in trust) in such corporation, or any creditor of such corporation whose demand is in full force and is not barred by any statute of limitations, may file a bill in the circuit court in chancery of any county of this state in which any of the real or personal property of such corporation may be situated, for the purpose of winding-up the affairs of such corporation and disposing of and distributing its property among the persons entitled thereto, which bill shall set forth in substance:

First: The nature of complainant's interest in the property, the date of the organization of the corporation or the date of approval of the special act under which it may have been organized, with the title of such act, as the case may be, its term of corporate existence and a copy of its articles of association (if any), if the same be on file or of record in the office of the secretary of state or county clerk, or if such corporation be organized by special act, then a copy of such special act.

Second: A statement of the assets, real and personal, belonging either in law or equity to such corporation, so far as is known to complainant.

Third: A statement of the amount of capital stock and of the amount thereof paid in, if known, together with the names of stockholders, their residence, and the number of shares owned by them as shown in the last report of the officers of the corporation on file in the office of the secretary of state or county clerk, if any such report has been filed and can be found therein, and if there be no such report on file, then the foregoing facts shall be set forth as, and in so far as they may appear, by the articles of association or organization on file in the office of the secretary



of state or county clerk, if any such there be, or by the special act of the legislature organizing such corporation:

Provided: That if the stock books of the corporation are accessible to complainant, he shall also state the names of the stockholders, their place of residence, and the number of shares held by each, in so far as in such books they appear.

Fourth: A statement of all incumbrances upon any of the property of the corporation, together with all adverse claims upon the same, with the names and residences of the persons holding or asserting the same, so far as known to complainant.

Fifth: A statement of the debts of the corporation, if any, the names and residence of all its creditors, the nature of their demands, and the consideration of any such indebtedness, so far as known to complainant.

Sixth: If the creditors or owners of the stock of such corporation, or any of them, are unknown to complainant, the bill shall set forth that fact and the bill shall aver that it is filed, not only on behalf of complainant, but also of all other persons interested in the property of the corporation, whether as stockholders, creditors, or otherwise, who may choose to come in as parties complainant and share the expense of the proceeding.

Seventh: Such bill shall pray that the affairs of the corporation be wound up and its assets disposed of and distributed, and may pray for the appointment of a receiver of its property, and may contain any other appropriate averments of fact and pray for any other appropriate relief.

**Sec. 7085. Bill to be verified by complainant.** Such bill shall be verified by the complainant, or by some one in his behalf substantially in the manner required by rule number eight of the chancery rules.

**Sec. 7086. Corporation made defendant by corporate name.** Such corporation shall be made a party defendant by its corporate name; all persons claiming any encumbrances upon the property thereof may be parties defendant. It shall not be necessary to make any stockholder or owner of the stock or any part thereof, or creditor of such corporation, a party defendant.

**Sec. 7087. Certificate of stock to be prima facie proof of ownership.** The possession of a certificate of stock purporting to represent a part of the stock of such corporation, running to the holder or assigned to him, or assigned in blank, shall, prima facie, be proof of ownership thereof, and entitle such holders to prosecute such proceedings, or to defend (as hereinafter provided) the same or to receive dividends.

**Sec. 7088. To whom subpoenas shall issue.** Upon the filing of such bill a subpoena shall issue to all persons who are made defendants by name in said bill in the same manner as in ordinary chancery cases, and the court, or judge thereof, may make an order for the appearance and answer of such corporation, its stockholders and creditors, at a future day therein to be specified, not less than three months from the date of the order. Such order shall, among other things, set forth the general nature and object of the proceedings, describe the property to be affected by it, with a particular description of all the real estate, and shall give notice that the bill of complaint will be taken as confessed against said corporation and against all its creditors and stockholders who shall not within the time therein limited, appear and contest the same.

**Sec. 7089. Order to be published.** Such order shall be published within twenty days after it shall have been made, once in each week for six weeks in succession in some newspaper printed and published in every county wherein the bill of complaint avers the corporation owns land, which newspapers shall be specified in the order. If no newspaper be printed in a county where any land described in the bill is situated, then publication shall be made in some newspaper to be specified in the order printed in a county adjoining thereto. Thereupon, on filing the proof of such publication, and after the expiration of the time designated in such order for the appearance of the corporation defendant, if there shall have been no appearance of such corporation, nor of any person or persons, hereinafter mentioned, entitled to appear and contest the proceeding in its behalf and actually contesting the same, an order may be entered taking the bill as confessed against such corporation defendant, its stockholders and creditors, either as to said corporation and as to all of such persons, or as to all of such persons who have not appeared and made contest therein, as the case may be. Within the time fixed by such order for appearance, any person or persons who were stockholders of such corporation while it subsisted,

and who still retain their rights in its property by virtue of having owned stock therein, and any assignee, purchaser, heir, devisee, administrator, or executor of such former owner and any creditor or creditors of such corporation whose claim is subsisting and is not barred by limitation of time, may appear and defend such suit as fully as such corporation might do. All persons so appearing and defending shall plead in the name of the corporation. If there be any other party defendant made by the bill besides such corporation defendant, such other party defendant shall be summoned to answer in the usual manner if process can be served, and if not, brought in by publication in the usual manner.

**Sec. 7090. Publication of order to be complete notice of service on corporation.** The publication of such order for the appearance of such corporation defendant shall be full and complete notice to, and service upon such corporation, and all persons, natural and artificial, interested in its property because of having been stockholders in such corporation while subsisting, or of having in any manner acquired the rights of such stockholders, or because of being creditors thereof, for all the purposes of this proceeding, and to enable the court to order and complete the sale of all its property and to distribute according to law the avails thereof.

**Sec. 7091. When receiver may be appointed.** The court, or judge thereof, may at any time, on proper application of complainant, and notice to the proper parties, to be given personally or by publication in such manner as the court or judge thereof may order, appoint a receiver of any or all of the property in question, and then, or thereafter on like application, direct such receiver to give notice of his appointment, and to therein require that:

First, all persons indebted to such corporation shall render on a certain day and place therein fixed, an account to such receiver of all debts and sums of money owing by them to said corporation and pay the same to him.

Second, all persons having in their possession any property or effects of such corporation shall deliver the same to the receiver at the same time and place.

Third, all creditors of such corporation shall deliver a statement of their claims and demands, and of the nature thereof, to the receiver at the same time and place, which statement shall be verified by the oath of the creditor, or his agent or attorney.

The day fixed in such notice shall not be less than sixty days from the date thereof, and the place a convenient one in the county where the proceeding is pending. Such notice shall be published, within one week after it is made, once in each week for six weeks in succession in some newspaper printed and published in the county where the proceeding is pending, if one be printed and published therein, and if not, in some newspaper printed in a county adjoining thereto.

All personal claims, demands, and causes of action against said corporation shall, unless presented to the receiver within the time in said notice limited, or to the court, before a division of the assets among the creditors is ordered, be forever barred.

Such receiver shall be required to give security for the faithful performance of his duties hereunder by bond running to the register of the court, with such sufficient surety or sureties and in such amount as shall be required and approved by the circuit judge and any moneys recovered by suit thereon for breach of condition shall be treated as part of the assets of such corporation and be distributed accordingly.

**Sec. 7092. Receiver to be vested with all the estate of corporation, etc.** Such receiver shall be vested with all the estate, real and personal, and all the things in actions which were vested in such corporation at the time of the expiration of its term of existence as fixed by its articles of association and the laws of this state in that behalf, and which have not since been in any wise divested: may bring suits and actions for the same, and shall hold and dispose of the same for the benefit of those interested therein as creditors and stockholders, under the orders of the court. He may sell the real and personal property at such time and in such manner as the court may direct, provided that the real estate shall be sold only at public auction, on such notice as is prescribed at the time of such sale by law for the sale of real estate on foreclosing a mortgage in chancery. He shall report to the court any sale of real or personal property made by him, and if the court shall be satisfied that such sale is for the best interest of those concerned therein, an order shall be entered confirming such sale and directing a conveyance thereof, by the receiver as such, to the purchaser or purchasers, and such conveyance, when made and con-

firmed, shall transfer all the right, title, claim, and interest therein whether legal or equitable, which such corporation had, immediately before the expiration of its corporate term or thereafter, and shall vest in such purchaser, his heirs and assigns, the same right and title as could have been conveyed by such corporation while its corporate term was current and such purchaser shall hold the same free and clear of all claims thereon by such corporation, its creditors and stockholders, except as herein otherwise provided.

**Sec. 7093. Receiver to report to court condition of estate.** Such receiver shall report to the court, from time to time, as directed, upon the condition of the estate, the amount of money in his hands, and the claims or debts against the corporation proved or filed; and the money in his hands shall be paid into court by him and distributed (after payment of the proper expenses in the proceeding) first among the creditors (if any) and then, as to the residue, among the stockholders, as the court shall direct.

**Sec. 7094. Compensation of receiver.** Such receiver shall receive such reasonable compensation for the discharge of his duties as the court may deem proper, and such charges, and all proper disbursements by him made in the discharge of his duties and allowed by the court shall be first paid out of such moneys, and the court may allow a reasonable sum to the complainant as a solicitor's fee in the proceeding, together with all proper disbursements made by him therein, which sum when allowed by the court, shall be paid by such receiver out of any moneys in his hands before any distribution is made to creditors or stockholders.

**Sec. 7095. When receiver to make final report.** After such receiver shall have disposed of all the estate of such corporation, he shall make his final report, which shall state what disposition has been made of such estate, and the moneys received therefor, and the disbursements made by him, and on the filing of such report the court may make an order for the distribution of any surplus remaining in his hands, and such receiver may, on compliance with such order, be discharged of his trust.

**Sec. 7096. Sale of property by receiver not to be questioned when confirmed by court.** No sale or disposition of any of such real or personal property, conveyed by such receiver and confirmed by the court pursuant to the provisions of this act, shall be questioned by any one, in any suit or proceeding in law or equity, in any court of this state, after the expiration of one year from the date of such confirmation, and nothing herein contained shall be construed or held to revive any debt or claim against such corporation which is or shall be barred by any statute of limitations.

**Sec. 7097. Stockholders may become purchasers of corporation property.** Any stockholder of such corporation may become the purchaser of the property thereof, and may be credited upon the purchase price with such proportion thereof as his stock bears to the entire capital stock of such corporation: Provided, that in such case, such purchaser shall not be exonerated from contribution for the payment of debts and expenses, but shall thereafter pay into the court, such proportional amount for that purpose as the court may order, and for such amount the property purchased shall also be holden.

**Sec. 7098. Proceedings in case claim of creditor or stockholder fail or be disproved.** In case the claim of the complainant to be a stockholder or creditor of such corporation shall fail or be disproved, the proceeding may go on at the desire and for the benefit of any other stockholder or stockholders, creditor or creditors, who may have appeared in such proceeding, and whose right to continue the same shall be made to appear; and duly certified copies of the final decree to be made in the proceeding may be recorded in the office of the register of deeds of the counties wherein the lands are situate, and such record or certified copies thereof shall be prima facie proof of such decree and sale, and of the regularity and validity of all steps taken to obtain the same.

**Sec. 7099. Taxes levied to be paid out of assets.** All taxes levied upon the corporation or its property shall be paid out of its assets by the receiver, and the creditors of the corporation whose claims have been presented and allowed under the provisions of this act shall be paid in the following order:

First: All persons who shall have furnished or performed any labor for the corporation, and all bona fide holders of any draft or order for the payment of money due for any such labor, issued or drawn by an officer, clerk, or agent of such corpo-

ration, shall be paid in full if there be funds sufficient, after the payment of taxes and the expenses of the proceeding, and if not, then pro rata.

Second: All other creditors holding personal claims or demands against the corporation shall be paid in full, if there be a sufficient surplus after the payments mentioned in the preceding subdivision, and if not, then pro rata.

**Sec. 7100. After property of corporation is sold, corporation to summon personal creditors whose claims have not been presented, to file claims.** After the property of the corporation shall have been sold, and the report of the receiver showing the claims filed with him under section nine of this act, made, and after such claims shall have been passed upon by the court, the court, or the judge thereof, may make an order in the cause, which order shall recite, among other things, the amount of claims reported and allowed against the corporation and shall summon all personal creditors of the corporation, if any, whose claims have not been presented, to present and file their claims with the register of the court on or before a day certain therein to be stated not less than eight weeks from the date thereof, or the same will be forever barred. Such order shall be published within one week from its date, once in each week for four successive weeks, in some newspaper specified in the order, printed and published in every county wherein the order for appearance of the corporation mentioned in section seven of this act was published, or in an adjoining county in the case in said section seven provided; and on filing in the cause due proof of such publication, and after the expiration of the time limited therein for presenting and filing claims with the register, all such claims not presented and filed shall be forever barred as against such corporation and its assets.

**Sec. 7101. Manner of hearing, proving and contesting claims against corporation.** The court in which said proceedings are brought or in proper cases the judge thereof, may make such orders for the manner of hearing, proving, and contesting claims against such corporation, and of hearing, proving, and contesting the rights of persons claiming to be stockholders thereof, not inconsistent with the provisions of this act as shall be just and proper, and may make all such orders and decrees touching any proceedings hereunder proper to secure the rights of persons interested, not inconsistent herewith. The court may also make such orders and regulations as may be convenient and necessary, touching the custody of the funds remaining, after payment of expenses and of claims against the corporation and touching the division of the same among stockholders of the corporation who may thereafter and from time to time appear claiming to share therein.

**Sec. 7102. When appeal may be made to Supreme Court.** Any corporation, person or persons, claiming to be aggrieved by any decree or final order of any circuit court in chancery in any proceeding mentioned in this act, may appeal therefrom to the supreme court. Such appeal shall be claimed by a written claim delivered or transmitted within twenty days from the entry of such decree or final order to the register in chancery of the court where such decree or final order was entered, which said register shall make entry of, and the appellant shall, within the same twenty days, file with said register a bond naming as obligee the said register, and with sufficient sureties approved by the circuit judge, or said court, or a circuit court commissioner of the county wherein said decree was entered, and with such penalty as such judge or commissioner shall approve, conditioned for the diligent prosecution of such appeal, and for the performance or satisfaction of any decree or final order of the supreme court against the appellant in the cause, and for payment of all costs that may be awarded against the appellant in said supreme court in the matter of said appeal. That upon the filing of said bond with approval as aforesaid, the appeal shall be deemed perfected and the register in chancery shall, on payment of five dollars to him on behalf of the appellant, make return to the supreme court, and the supreme court shall have power to hear and determine such appeal and all matters concerning the same and shall have power to reverse, affirm, or alter the order or decree appealed from and to make such other order or decree therein as shall be just, in like manner and with like effect as on appeals in suits in chancery according to the existing statutes of the state of Michigan and the rules of the supreme court in such case made and provided. The supreme court, while any appeal shall be pending therein, may, on special motion, give such directions as to said court shall seem proper concerning any stay of proceedings. The supreme court, or the circuit judge of the court where such decree or final order was made, shall, on special motion and proper showing, have power after such

appeal is perfected to order an additional bond and fix the penalty thereof, and approve the sureties thereto, or to refer such approval to a circuit court commissioner of said county in which the cause shall have been pending; the supreme court aforesaid, or the circuit court, may, concerning any bond aforesaid, order a suit to be brought and prosecuted for the benefit of any person, persons, or corporation as such court may direct, and thereupon such suit may be brought and prosecuted to effect, and all moneys collected in such suit shall be disposed of as such court shall direct.

**Sec. 7103. In making return to appeal, files and records to be transmitted to supreme court.** In making return to any appeal, it shall be necessary to transmit to the supreme court only such part of the files, records, and proceedings as may be necessary to enable the supreme court to pass upon the order or decree appealed from, but the supreme court shall have power to order such further return to be made to the appeal at it may deem necessary.

**Sec. 7104. Previous proceedings to continue.** All proceedings begun under said acts numbered two hundred sixty-two and one hundred thirty-seven, up to the time of this act takes effect, may continue and be prosecuted to a conclusion thereunder and in such case shall be and remain as valid and effectual as if this act had not been passed, or at the pleasure of the complainant or complainants therein, may be continued and prosecuted under this act: Provided, that any party to proceedings begun under said acts two hundred sixty-two and one hundred thirty-seven shall have the right of appeal secured by this act.

### General provisions.

**Sec. 8527. Corporations may sue and be sued, elect officers and make by-laws.** All corporations shall, when no other provision is specially made, be capable, in their corporate name, to sue and be sued, appear, prosecute, and defend all actions and causes to final judgment and execution, in any courts or elsewhere; to have a common seal, which they may alter at pleasure; to elect, in such manner as they shall determine to be proper, all necessary officers, and to fix their compensation, and define their duties and obligations; and to make by-laws and regulations consistent with the laws of the state, for their own government, and for the due and orderly conducting of their affairs, and the management of their property.

**Sec. 8528. Nature of by-laws.** All corporations may, by their by-laws, where no other provision is specially made, determine the manner of calling and conducting their meetings, the number of members that shall constitute a quorum, the number of shares that shall entitle the members respectively to one or more votes; the mode of voting by proxy, the mode of selling shares for the non-payment of assessments, and the tenure of office of the several officers; and they may prescribe suitable penalties for the violation of their by-laws, not exceeding in any case twenty dollars, for any one offense; but no such by-laws shall be made by any corporation, repugnant to the provisions of its charter.

**Sec. 8529. Notice of first meeting; when delivered or published.** The first meetings of all corporations, unless otherwise provided for in the acts under which they are incorporated, or in their articles of association, shall be called by a notice, signed by one or more of the members or persons associating to form the corporation, setting forth the time, place, and purpose of the meeting; and such notice shall, at least twenty days before the meeting, be delivered to each member, or published in some newspaper of the county where the corporation shall be established, or if no newspaper be published in the county then in a newspaper published in an adjoining county, or in the city of Detroit.

**Sec. 8530. Same.** Whenever, by reason of the death, absence, or other legal impediment of the officers of any corporation, there shall be no person duly authorized to call or preside at a legal meeting thereof, any justice of the peace of the county where such corporation is established may, on a written application of three or more of the members thereof, issue a warrant to either of the said members directing him to call a meeting of the corporation, by giving such notice as shall have been previously required by law; and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk shall be duly chosen and qualified, if there shall be no other officer present legally authorized to preside thereat.

**Sec. 8531. Where notice unnecessary.** When all the members of a corporation shall be present at any meeting, however called or notified, and shall sign a written

consent thereto on the record of such meeting, the doings of such meeting shall be as valid as if legally called and notified.

**Sec. 8532. Members may fill vacancies, etc.** The members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

**Sec. 8533. Corporate rights. Transfer of stock.** Every such corporation may: 1. Hold land to an amount authorized by law; 2. And may convey the same and may; 3. Receive subscriptions to its capital stock in lands situate in the state of Michigan, or 4. May receive donations of lands situate in the state of Michigan, to assist or enable such corporation to perform or complete any work of public improvement in which such company may be engaged in pursuance of its charter, and may sell and convey the same; and whenever the capital stock of such corporation is divided into shares, and certificates thereof are issued, such shares may be transferred by indorsement and delivery of the certificate thereof, such indorsement being by the signature of the proprietor, or his attorney or legal representative; but such transfer shall not be valid, except between the parties thereto, until the same shall have been so entered on the books of the corporation as to show the names of the parties by and to whom transferred, the number and designation of the shares, and the date of the transfer. Where no other provision is especially made any corporation organized for profit and having a capital stock, may at any annual meeting of its stockholders, or at any special meeting duly called for that purpose, amend its articles of association in any manner not inconsistent with the act or acts under which such corporation may be organized, by a resolution adopted by a vote of two-thirds in interest of its capital stock; but such amendment shall not become operative until a certificate showing it to have been adopted as herein required, signed by the president and secretary of the corporation shall have been filed or recorded or both filed and recorded in the same manner as required in case of original articles of such corporation. And any corporation not organized for profit, and having no capital stock may amend its articles of association by a vote of a majority of the members of such corporation at any regular meeting, or at any special meeting called for that purpose, but such amendment shall not become operative until a certificate showing it to have been regularly adopted in the manner herein prescribed, signed by the president, or other chief officer, and a majority of the directors or trustees of such corporation shall have been filed, or recorded or both filed and recorded, in the same manner as required in case of original articles of such corporation.

**Sec. 8534. May continue, for what purposes.** All corporations whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless continue to be bodies corporate, for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations have been or may be established.

**Sec. 8545. When contribution may be enforced in chancery.** When the officers or members of a corporation, or any of them, are liable for any debts of the corporation, or for any acts of such officers or members, respecting the business of the corporation, and also when any of the said officers or members shall be liable to contribute, for money paid by any other or others of them, on account of any such debts or acts, the money may be recovered by a bill in chancery; and the said court may make all such orders and decrees therein as may be necessary to do justice between the parties.

**Sec. 8546. What acts of incorporation may be altered or repealed.** Every act of incorporation passed since the twentieth day of April, in the year one thousand eight hundred and thirty-nine, or which shall be hereafter passed, shall, at any time, be subject to amendment, alteration, repeal, at the pleasure of the legislature: Provided, that no act of incorporation shall be repealed, unless for some violation of its charter or other default, when such charter shall contain an express provision limiting the duration of the same.

### Individual liability of stockholders.

**Sec. 8554. Enforcement of individual liability of stockholders.** Whenever, by the constitution or laws of this state, the stockholders of any corporation are in-

dividually liable for any debts of such corporation, the remedy for the enforcement of such liability shall be as hereinafter prescribed, and not otherwise: Provided, that this act shall not apply to cases where the suit is for labor, and the action is brought by the person who performed the labor.

**Sec. 8555. Not liable until judgment obtained against corporation.** No proceeding shall be taken to enforce such liability until after a judgment has been recovered against the corporation on account of such indebtedness, and an execution issued upon such judgment to the county in which its principal office is situated or its business carried on has been returned unsatisfied, in whole or in part.

**Sec. 8556. When court may enter order.** Whenever judgment has been recovered against any corporation for an indebtedness for which the stockholders of such corporation are by law liable, and an execution has been issued thereon as above provided, and returned unsatisfied, the court upon application of the plaintiff shall enter an order in such suit requiring the secretary, or other proper officer of such corporation, within a time designated in such order, to file in said cause a statement, under oath, of the names and residences of all persons who appear by the books of such corporation, or that such officer has reason to believe were stockholders therein at the time the debt for which such judgment was recovered, accrued, and the amount of stock held by each of said persons, and upon service upon such officer of a duly certified copy of such order, it shall be his duty to comply therewith.

**Sec. 8557. What petition must set forth.** The statement mentioned in the last preceding section having been filed, plaintiff may make and file in the case his petition in writing, setting forth:

First, that he has obtained a judgment against the corporation, and the amount thereof.

Second, that execution has been issued thereon and returned in whole or in part unsatisfied, as the same may be, and the sum remaining unpaid thereon.

Third, that the several persons named in such statement of the officer of the corporation were, at the date the debt accrued on which the judgment was rendered, stockholders in such corporation, and the amount of stock held by each;

Fourth, what was the consideration received by the corporation for the debt on which such judgment was rendered; and praying that judgment may be awarded against said several stockholders in favor of the plaintiff for the sum so as aforesaid averred to be due from said corporation, and that a citation may issue from said court, under the seal thereof, to the said several stockholders, requiring them to appear in said cause on a certain day to be therein named and answer why judgment should not be entered against them as therein prayed. On the filing of such petition, an order for citation to issue shall be made as of course, and it shall be the duty of the clerk of the court immediately to issue the same, which shall be addressed to the several persons named in the petition as stockholders, and may be served by any person in any part of this state.

The return day of such citation shall not be less than fifteen nor more than thirty days from the date of its issue.

Jurisdiction over any of the persons named in such citation shall be secured by a personal service of the same within this state.

**Sec. 8558. Answer of person cited.** On the return day named in such citation, or at such time thereafter as the court may allow for that purpose, each of the persons so cited and served shall make separate and several answer in writing, signed by him, to such petition; which answer, if the liability be denied, or facts shall be relied upon in defense against such charge of liability, shall contain a statement of such facts, or the specific grounds of defense, and shall be verified by the oath of the respondent.

**Sec. 8559. Issue, how tried.** The issue thus made by the petition and answer, whether of fact or law, shall be tried in the same manner as like issues of fact or law.

**Sec. 8560. Return of execution unpaid prima facie evidence.** On the trial of any issue of fact formed as aforesaid, the judgment against the corporation and the amount thereon remaining unpaid, as shown by the return of the execution thereon, shall be prima facie evidence of the sum due to the plaintiff, but not that the debt on which said judgment was rendered is one for which the respondents are personally liable.

**Sec. 8561. Each issue treated as original suit.** Each of the issues so formed shall be deemed and treated as an original suit or cause in respect to the payment of the county jury and stenographer's fees, and the final taxation of costs. The right of review by the supreme court, and the method of procedure to secure it, shall be in all respects the same as in a common law trial.

**Sec. 8562. Judgment against respondent, when.** If any such respondent shall answer admitting the facts set forth in such petition, or if default in answering shall be made by any of them, judgment shall at once be rendered against such respondent severally, for the amount remaining unpaid of the judgment against said corporation, upon proof being made that the debt is one for which such respondent, as stockholder, is personally liable.

**Sec. 8563. Same.** If any such issue of law or of fact shall be determined adversely to the respondent, judgment shall thereupon be awarded against him for the full amount remaining unpaid of the judgment against such corporation, if it shall have been determined that such judgment was for a debt for which such respondent is personally liable as a stockholder in said corporation, or upon proof of that fact.

**Sec. 8564. Apportionment of amount.** After the several issues so formed shall have been determined and judgment awarded against the several persons named in such petition, and personally served with citation to appear as hereinbefore provided, who have been adjudged liable, the court shall make an order in the cause apportioning between them the sum for which they have thus been severally adjudged liable, pro rata, according to the stock held by each. If any of the respondents shall refuse or neglect to pay the amount proportioned against him, for the period of fifteen days thereafter, an execution shall be issued against his goods and chattels for the collection thereof.

**Sec. 8565. Duty of court where execution unsatisfied.** On the return of such execution unsatisfied in whole or in part, or if for any cause there shall be a failure to collect of any of the respondents the sum so as aforesaid apportioned against him, the court shall have power, and it shall be its duty on application by or on behalf of the plaintiff, and the fact being made to appear, to re-apportion the sum so remaining uncollected on the basis of section eleven of this act provided, among the remainder of said respondents so adjudged liable, and an execution shall issue for the collection thereof in like manner as provided in said last named section.

**Sec. 8566. Right of contribution.** Any stockholder who shall be compelled to pay more than his pro rata share of the debts of the corporation shall be entitled to enforce contribution from such other of the stockholders as are also liable for such debts and have not contributed their due proportion in payment thereof.

### **Registers of stockholders.**

**Sec. 8567. Corporations in this state to keep list of stockholders.** All corporations formed under the laws of this state, and whose principal office for the transaction of business shall be located without the limits of this state, are hereby required when such corporations have an office within this state, to keep a list of all stockholders of such corporation together with a statement of the number of shares held by each stockholder, and a transfer book of the stock thereof, at their agency or office in this state, and if there be more than one, then at some one of such agencies or offices to be designated by the officers of such corporation: Provided, that corporations organized for the purpose of, or engaged in mining for iron, copper, mineral, coal, silver, or other ores or minerals in the upper peninsula, shall not be required to keep a transfer book of the stock thereof at such agency or office within this state. The failure to keep such list of stockholders together with a statement of the number of shares of stock held by each, and to keep a transfer book of the stock at such office or agency in this state, shall be deemed a misuser of the charter of such corporation and work a forfeiture thereof.

**Sec. 8568. Transfer of stock.** Any person holding stock in any such corporation, may have the same transferred upon the books of such agency within this state, upon the same terms, conditions, and restrictions as is provided by law, or the rules of such corporation, for such transfer at the principal office of such corporation, wherever it may be situated.



### Amendments of charters.

**Sec. 8569. Notice of application for alteration or amendment of charters, how given.** After the session of the legislature for the year eighteen hundred and fifty-one, previous notice of any application to the legislature for an alteration of the charter of any corporation shall be given in the manner hereinafter provided. When the application is made by or on behalf of the corporation, such notice shall be given and signed by the mayor, president, cashier, secretary, or other principal officer, or a majority of the directors, aldermen, or trustees; and when made by or on behalf of one or more individuals, then by the person or persons making the same; and all such notices shall set forth briefly the nature of the alteration applied for.

**Sec. 8570. Where notice to be published.** If the business of such corporation shall be local in its character, and confined to one of the counties of this state, other than those of the upper peninsula, such notice shall be published in some weekly newspaper published in such county, or if none in the county, then in one published nearest thereto, for at least four successive weeks; the first publication whereof shall be at least thirty days prior to the making of such application. If the business of such corporation shall not be local in its character or if the business authorized by the charter shall be confined chiefly to the upper peninsula, then such notice shall be published once in each week for four successive weeks, in some paper published in the city of Detroit; the first publication whereof shall be at least thirty days prior to the making of such application. And if the applicant or applicants shall not be able to get such notice published in such paper as in this section mentioned, after having tendered to the publishers thereof a reasonable compensation therefor, then such notice may be filed in the office of the county clerk of the county where the principal business office of such corporation may be located and a duplicate thereof in the office of the secretary of state, at least thirty days prior to such application; and such filing shall be deemed a sufficient publication thereof; and proof of the publication or filing of such notice as in this section mentioned, by affidavit of the publisher, or the certificate of the secretary of state, shall accompany every application in this section mentioned.

**Sec. 8571. When application may be made without previous action.** Nothing in this act contained shall prevent any corporation, or any individual, from applying to the legislature for an amendment of any act of incorporation without such notice as above provided, if the amendment applied for be shown to be necessary to provide for any accident, or to remedy any defect which may have occurred within the period hereinabove required for the giving of such notice, nor shall this act prevent the legislature without such notice from amending any charter of a municipal corporation in any particular which they may deem necessary for the public interest; and in either of the cases in this section mentioned, one day's previous notice in either house, by a member thereof, shall be deemed sufficient.

### Sale of property and franchises.

**Sec. 8572. Sale of corporate property.** Any corporation formed under any general law of this state may at any general or special meeting of its stockholders, with the consent of three-fourths of its capital stock, sell and convey all its property and franchises, rights and privileges, or any portion of its real property or franchises to any other corporation formed under the same or any similar law for corporate purposes of the same character. No such meeting of stockholders of any corporation shall be legal or valid, or the proceedings thereof of any force or effect unless the directors or other officers or parties calling the same shall cause a notice of the time, place, and object of holding the same to be published in accordance with the provisions of the law or laws of this state under which such corporation is organized: Provided, that nothing herein contained shall be construed as authorizing any railroad corporation to consolidate its stock, property, or franchises with any other railroad corporation owning a parallel or competing line.

**Sec. 8573.** Any number of persons desiring to purchase the property, franchises, rights, and privileges, of any existing corporation may organize a corporation under the law under which said corporation is formed, or any similar law, and in accordance with its requirements and provisions, and the corporation so organized, or any corporation already organized under such law, shall have power to purchase the property, (franchises) franchise, rights, and privileges of any such existing cor-

poration: Provided, that nothing herein contained shall release in whole or in part said selling corporation from any or all of its liabilities previously contracted: Provided further, that the provisions of this act shall not apply to corporations organized or existing under an act, entitled "An act to revise the laws providing for the incorporation of companies for mining, smelting, and manufacturing iron, copper, silver, mineral, coal, and other ores, minerals, and to fix the duties and liabilities of such corporations, approved May eleventh, eighteen hundred and seventy-seven".

### **Foreclosure of mortgage or lien against property of corporation whose term has expired.**

**Sec. 8580. When holder of mortgage, etc., may file bill, etc.** Whenever the term of existence of any private corporation organized under the laws of this state shall hereafter expire, or shall have heretofore expired, by limitation, under the terms of its articles of incorporation, leaving any mortgage, lien, or incumbrance upon its real estate, upon which there shall remain any sum owing and unpaid, it shall be lawful for the holder or owner thereof to file his bill in the circuit court in chancery, in the county where said real estate, or some portion thereof, is situate, for the foreclosure of such mortgage, or the enforcement of such lien or incumbrance, and proceed therein to a final decree and sale, the same, and with the same force and effect, as though the term of the corporate existence of said corporation had not expired: Provided, the complainant shall make the corporation and all the stockholders thereof, as far as known, defendants to said bill.

**Sec. 8581. Service of subpoena, etc.** After the filing of a bill of complaint in such case, a subpoena may issue and be served upon such corporation, by serving a copy of such subpoena upon the last president, vice-president, secretary, or treasurer of said corporation, if found within this state, and if no such officer shall be found in this state, on satisfactory proof by affidavit that none of said officers can be found in state this, or that none of them reside therein, the circuit judge of the court in which said suit or proceeding shall have been or shall hereafter be commenced, shall have full power and authority to make an order for the appearance of such defendant corporation at a day therein to be specified, in like manner as is provided by law for the bringing in of non-resident (defendants) defendant in courts of chancery and all the provisions (of) by law governing the practice of courts of chancery relative to the publication of such notice and the subsequent proceedings thereunder shall apply to and govern proceedings had under the provisions of this act and absent or non-resident stockholders made defendants in such suit or proceedings may be brought in in like manner.

**Sec. 8582. Of other proceedings, etc.** All other proceedings in such matter shall be according to the usual rules and practice of courts of chancery in this state, and the final decree and sale, if any, shall have the same force and effect as in ordinary foreclosure proceedings in chancery.

### **Change of name.**

**Sec. 8583. Name of any corporation organized under the laws of this state, how changed.** Where no other provision is especially made, any corporation heretofore or hereafter organized under the laws of this state may amend its articles of association by the adoption of a new name for such corporation, by a vote of not less than two-thirds in interest of all its stockholders, but before it shall commence any business under its amended articles, the said corporation shall cause such amendment or amendments, subscribed by at least two-thirds in interest of all of its stockholders, and certified by its president, to be filed or recorded, as the case may be, in the same manner as is provided for in its original articles of incorporation, and when so recorded, such amendment or amendments shall become a part of the articles of incorporation of such company: Provided, however, no two corporations shall assume the same name, nor a name that shall be so similar as to be liable to mislead.

### **Suits against corporations.**

**Sec. 9755. Injunctions against corporations.** Upon a bill being filed under the direction of the attorney general, in any court having equity jurisdiction, the court shall have power to restrain by injunction, any corporation from assuming.

or exercising any franchise, liberty, or privilege, or transacting any business not authorized by the charter of such corporation; and in the same manner to restrain any individuals from exercising any corporate rights, privileges, or franchises, not granted to them by any law of this state.

**Sec. 9756. Issuing and continuance of injunction.** Such injunction may be issued before the coming in of the answer, upon satisfactory proof that the defendants complained of have usurped, exercised, or claimed, any franchise, privilege, liberty, or corporate right not granted to them, and after the coming in of the answer, such injunction may be continued until judgment at law have been had.

**Sec. 9757. Jurisdiction over officers of corporations.** The circuit court within the proper county shall have jurisdiction over directors, managers, trustees, and other officers of corporations, and over any persons who may have held such offices, in any corporation, provided that proceedings are commenced within one year after they have ceased to be such directors, managers, trustees, and other officers:

First, to compel them to account for their official conduct in the management and disposition of the funds and property committed to their charge.

Second, to decree and compel payment by them to the corporation whom they represent, and to its creditors, of all sums of money and of the value of all property which they may have acquired to themselves or transferred to others, or may have lost or wasted by any violation of their duties as such directors, managers, trustees, or other officers.

Third, to suspend any such trustee or officer from exercising his office whenever it shall appear that he has abused his trust.

Fourth, to remove any such trustees (trustee) or officer from his office upon proof or conviction of gross misconduct.

Fifth, to direct new elections to be held by the body or board duly authorized for that purpose, to supply any vacancy created by such removal.

Sixth, in case there be no such body or board, or all the members of such board be removed, then to report the same to the governor, who shall be authorized, with the consent of the senate, to fill such vacancies.

Seventh, to set aside all alienations of property made by the trustees or other officers of any corporation contrary to the provisions of law, or for purposes foreign to the lawful business and objects of such corporations, in cases where the person receiving such alienation knew the purposes (purpose) for which the same was made; and,

Eighth, to restrain and prevent any such alienation in cases where it may be threatened or there may be good reason to apprehend that it is intended to be made.

**Sec. 9758. Construction of last section.** When any of the visitatorial powers enumerated in the preceding section, over any corporation, are or shall be vested, by statute, in any corporate body or public officer, the provisions of that section shall not be construed to divest or impair the powers so vested.

**Sec. 9759. Jurisdiction, how exercised.** The jurisdiction conferred in the third section of this chapter shall be exercised as in ordinary cases on bill, or petition, as the case may require, or as the court may direct, at the instance of the attorney general, prosecuting in behalf of the people of this state, or at the instance of any creditor of such corporation, or at the instance of any director, trustee, or other officer of such corporation having a general superintendence of its concerns, or by any stockholder of such corporation.

**Sec. 9760. Sequestration of corporate property.** Whenever a judgment at law, or a decree in chancery, shall be obtained against any corporation, incorporated under the laws of this state, and an execution issued thereon shall have been returned unsatisfied in part or in whole, upon the petition of the person obtaining such judgment or decree, or his representatives, the circuit court within the proper county may sequester the stock, property, things in action, and effects of such corporation, and may appoint a receiver of the same.

**Sec. 9761. Distribution upon decree.** Upon a final decree on any such petition, the court shall cause a just and fair distribution of the property of such corporation and of the proceeds thereof, to be made among the fair and honest creditors of such corporation, in proportion to their debts respectively, who shall be paid in the same order as provided in the next succeeding chapter, in the case of a voluntary dissolution of a corporation.

**Sec. 9762. Surrender of corporate rights.** Whenever any incorporated company shall have remained insolvent for one whole year, or for one year shall have neglected or refused to pay and discharge its notes, or other evidence of debt, it shall be deemed to have surrendered the rights, privileges, and franchises granted by any act of incorporation, or acquired under the laws of this state, and shall be adjudged to be dissolved.

**Sec. 10011. Attachment in tort actions.** Actions of tort may be commenced in courts of record within this state by writ of attachment against non-residents including non-resident or foreign corporations when the cause of action has arisen or may hereafter arise in this state or where the cause of action has accrued or shall hereafter accrue during the time that the plaintiff in such action shall have been a bona fide resident of this state. Such writ shall be in the same form as in attachment suits on contract and the proceeding shall be the same as in actions of contract commenced by attachment except as herein provided to the contrary.

**Sec. 10012. Affidavit.** An affidavit shall be annexed to said writ before its execution and before the order prescribing the amount of property that may be attached as provided by section three of this act which shall be made by the plaintiff in such action or by some other person by him authorized so to do who shall have a knowledge of the facts stated therein and which affidavit shall fully state and describe the cause of action, also that the defendant is a non-resident or foreign corporation and that the cause of action arose in this state or accrued to the plaintiff at a time when such plaintiff was a bona fide resident of this state and that the defendant is carrying on business in or is the owner of property within this state at the time of the making of such affidavit and no further proof or other affidavit shall be required.

**Sec. 10013. Order of court.** Before any property shall be attached on said writ, an order must be endorsed thereon by a circuit court commissioner of the county where the suit is commenced, or by any circuit or supreme judge, prescribing the amount of property that may be attached, which order shall be substantially as follows: "Let the property of the defendant in the within writ be attached to the amount of ... dollars." Such order shall be signed by the officer allowing the same. Such property may be released in the manner prescribed in the general law relating to attachment suits on contract.

**Sec. 10014. Proceedings.** The same proceedings shall be had in serving and executing such writ of attachment as is now had in attachment proceedings in assumpsit, and service upon defendant shall be in all respects as prescribed in chapter two hundred and one of the compiled laws of eighteen hundred and seventy-one and the acts amendatory thereto. But if the defendant has a manager, agent, superintendent, or other principal representative within the county where the suit is brought, there shall be served upon such manager, agent, superintendent, or other principal representative, the same papers that are now required to be served upon defendants in attachment suits in addition thereto.

**Sec. 10466. Security for costs.** A foreign corporation created by the laws of any other state or country may prosecute in the courts of this state, in the same manner as corporations created under the laws of this state, upon giving security for the payment of the costs of suit, in the same manner that non-residents are required by law to do.

**Sec. 10467. Illegal acts.** But when, by the laws of this state, any act is forbidden to be done by any corporation, or by any association of individuals without express authority by law, and such act shall have been done by a foreign corporation, it shall not be authorized to maintain any action founded upon such act, or upon any liability or obligation, express or implied, arising out of, or made or entered into in consideration of such act.

**Sec. 10474. Attachment.** In suits commenced by attachment in favor of a resident of this state, against any corporation created by or under the laws of any other state, government, or country, if a copy of such attachment, and of the inventory of property attached, shall have been personally served on any officer, member, clerk, or agent of such corporation within this state, the same proceedings shall be thereupon had, and with the like effect as in case of an attachment against a natural person, which shall have been returned served in like manner upon the defendant.

### Voluntary dissolution.

**Sec. 10852. Who may apply for dissolution.** Whenever the directors, trustees, or other officers having the management of the concerns of any corporation, or the majority of them shall discover: 1. That the stock, property, and effects of such corporation have been so far reduced by losses or otherwise that it will not be able to pay all just demands to which it may be liable; 2. Or to afford a reasonable security to those who may deal with such corporation; 3. Or whenever such directors, trustees, or officers, or a majority of them, shall, for any reason, deem it beneficial to the stockholders that such corporation should be dissolved, they may apply to any court having equity jurisdiction, by petition, for a decree dissolving such corporation, pursuant to the provisions of this chapter.

**Sec. 10853. Contents of application.** Every such application shall contain a statement of the reasons which induce the applicants to desire a dissolution of the corporation; and there shall be annexed thereto: 1. A full, just, and true inventory of all the estate, both real and personal, in law and equity, of such corporation, and of all the books, vouchers, and securities relating thereto; 2. A full, just, and true account of the capital stock of such corporation, specifying the names of the stockholders, their residence when known, the number of shares belonging to each, the amount paid in upon such shares respectively, and the amount still due thereon; 3. A statement of all encumbrances on the property of such corporation; 4. A full and true account of all the creditors of such corporation, and of all engagements entered into by such incorporation, which may not have been fully satisfied and canceled, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, and if not known, the fact to be so stated; the sum owing to each creditor; the nature of each debt or demand; and the true cause and consideration of such indebtedness in each case.

**Sec. 10854. Affidavit.** To every such petition there shall also be annexed an affidavit of the applicants that the facts stated in such application and the amounts, inventories, and statements contained therein or annexed thereto, are just and true, so far as the applicants respectively know, or have the means of knowing.

**Sec. 10855. Order to show cause.** Upon such petition, accounts, inventories, and affidavits being filed, an order shall be entered requiring all persons interested in such corporation to show cause, if any they have, why such corporation should not be dissolved, before some master in chancery, to be named in such order, at some time and place to be therein specified, not less than three months from the date thereof.

**Sec. 10856. Notice, how published.** Notice of the contents of such order shall be published once in each week for three weeks successively, in each paper as the court may direct, and in a newspaper published in the county where the principal place of conducting the business of such corporation shall be situated if any newspaper be published in such county.

**Sec. 10857. Proceedings of master.** On the day appointed in such order, such master shall proceed to hear the allegations and proofs of the parties, and shall take testimony in relation thereto, and shall with all convenient speed, report the same to the court, with a statement of the property, effects, debts, credits, and engagements of such corporation, and of all other matters and things thus pertaining to such corporation.

**Sec. 10858. Master to have petition.** Such master shall be entitled to the use of the original petition and schedules annexed thereto, if he require the same, by an order on the register of the court with whom they may be deposited, and shall return the same with his report.

**Sec. 10859. When corporation to be dissolved.** Upon the coming in of the report of the master, if it shall appear to the court that such corporation is insolvent, or that for any reason a dissolution thereof will be beneficial to the stockholders, and not injurious to the public interest, a decree shall be entered, dissolving such corporation, and appointing one or more receivers of its estate and effects; and such corporation shall thereupon be dissolved, and shall cease.

**Sec. 10860. Directors may be appointed receivers.** Any of the directors, trustees, or other officers of such corporation, or any of its stockholders, may be appointed receivers, who, upon entering upon the duties of their appointment, shall give

such security to the people of this state, and in such penalty as the court shall direct, conditioned for the faithful discharge of the duties of their appointment, and for the due accounting for all moneys and effects received by them as such receivers.

**Sec. 10861. Rights of receivers.** Such receivers shall be vested with all the estate, real and personal, of such corporation, from the time of their having filed the security hereinbefore required, and shall be trustees of such estate for the benefit of the creditors of such corporation, and of its stockholders.

**Sec. 10862. Powers of receivers.** Such receivers shall have all the power and authority conferred by law upon trustees to whom an assignment of the estate of an insolvent debtor may be made pursuant to the provisions of the one hundred forty-fifth chapter of these revised statutes; and shall also have power to continue the business of such corporation for a period not exceeding sixteen months, and to sell the property and assets of such corporation at private sale in the usual course of its business for cash or on the usual terms of credit, or to sell the property of such corporation in distinct parcels or in bulk: Provided, that a sale not in the usual course of business shall be made subject to confirmation by the court: And provided further, that the court in which such proceeding is pending may, on application of any party interested, if convinced that the continuance of such business is not subserving the best interests of the parties concerned, direct the suspension of such transactions and order the sale of the property in bulk or in parcels.

**Sec. 10863. When receivers to prosecute for arrears.** If there shall be any sum remaining due upon any share of stock subscribed in such corporation, the receiver shall immediately proceed and recover the same, unless the person so indebted shall be wholly insolvent; and for that purpose may file his bill in any court having equity jurisdiction, or may commence and prosecute an action at law for the recovery of such sum, without the consent of any creditors of such corporation.

**Sec. 10864. Receivers to notify appointment.** The receivers, immediately on their appointment shall give notice thereof, which shall contain the same matters required by law in notices of trustees of insolvent debtors; and in addition thereto shall require all persons holding any open or subsisting contract of such corporation to present the same in writing, and in detail, to such receivers, at the time and place in such notice specified; which shall be published once in each week for six successive weeks in such paper as the court may direct, and in a newspaper printed in the county where the principal place of conducting the business of such corporation shall have been situated, if such newspaper be there published.

**Sec. 10865. Certain sales void.** All sales, assignments, transfers, mortgages, and conveyances of any part of the estate, real or personal, including things in action, of every such corporation, made after the filing of the petition for a dissolution thereof, in payment of, or as security for, any existing or prior debt, or for any other consideration, and all judgments confessed by such corporation after that time, shall be absolutely void as against the receivers who may be appointed on such petition, and as against the creditors of such corporation.

**Sec. 10866. Debtors to account to receivers.** After the first publication of the notice of the appointment of receivers, every person having possession of any property belonging to such corporation, and every person indebted to such corporation, shall account and answer for the amount of such debt, and for the value of such property to the said receivers; and all the provisions of law in respect to trustees of insolvent debtors, the collection and preservation of the property of such debtors, the concealment and discovery thereof, and the means of enforcing such discovery, shall be applicable to the receivers so appointed, and to the property of such corporation.

**Sec. 10867. Referring controversies.** Such receivers shall have the same power to settle any controversy that shall arise between them and any debtors or creditors of such corporation, by a reference, as is given by law to trustees of insolvent debtors, and the same proceedings shall be had for that purpose, and with like effect; and application may be made to any officer authorized to appoint such referees on the application of the trustees of insolvent debtors, who shall proceed therein in the same manner; and the referees shall proceed in like manner and file their report with the like effect in all respects.

**Sec. 10868. Duties of receivers.** The receivers shall be subject to all the duties and obligations imposed by law on trustees of insolvent debtors, so far as they

may be applicable, except where other provisions are herein made, and they shall call a general meeting of the creditors of such corporation within four months from the time of their appointment, when all accounts and demands in favor of and against such corporation, and all its open and subsisting contracts shall be ascertained and adjusted, as far as may be, and the amount of moneys in the hands of the receivers declared.

**Sec. 10869. Open and subsisting contracts.** If there shall be any open and subsisting engagements or contracts of such corporation, which are in the nature of insurances or contingent engagements of any kind, the receivers may, with the consent of the party holding such engagement, cancel and discharge the same by refunding to such party the premium or consideration paid thereon to such corporation, or so much thereof as shall be in the same proportion to the time which shall remain of any risk assumed by such engagement, as the whole premium bore to the whole term of such risk; and upon such amount being paid by such receivers to the person holding or being the legal owner of such engagement, it shall be deemed canceled and discharged as against such receivers.

**Sec. 10870. Commissions of receivers.** Such receivers shall, in addition to their actual disbursements, be entitled to such commissions as the court shall allow, not exceeding the sum allowed by law to executors and administrators.

**Sec. 10871. To retain moneys.** The receivers shall retain out of the moneys in their hands a sufficient amount to pay the sums which they are hereinbefore authorized to pay for the purpose of canceling and discharging any open or subsisting engagements.

**Sec. 10872. To retain moneys to meet demands in suit.** If any suit be pending against the corporation, or against the receivers, for any demand, the receivers may retain the proportion which would belong to such demand, if established, and the necessary costs in their hands, to be applied according to the event of such suit, or to be distributed in a second or other dividend.

**Sec. 10873. Order of payment of debts.** The receivers shall distribute the residue of the moneys in their hands among all those who have exhibited their claims as creditors, and whose debts have been ascertained, as follows: 1. All debts entitled to a preference under the laws of the United States; 2. Executions actually levied against such corporations to the extent of the property on which they shall respectively be levied, and according to their legal priority; 3. Creditors having made special deposits, if such deposits remain in kind; 4. All other creditors of such corporation, in proportion to their respective demands, without giving any preference to debts due on specialties.

**Sec. 10874. Second dividend.** If the whole of the estate of such corporation be not distributed on the first dividend, the receivers shall, within one year thereafter, and within sixteen months after their appointment, make a second dividend of all the moneys in their hands among the creditors entitled thereto; of which, and that the same will be a final dividend, notice shall be published once in each week for three weeks successively, in such paper as the court may direct, and in a newspaper printed in the county where the principal place of business of such corporation was situated, if there be such newspaper.

**Sec. 10875. Proceedings thereon.** Such second dividend shall be made in all respects in the same manner as herein prescribed in relation to the first dividend, and no other shall be made thereafter among the creditors of such corporation, unless ordered by the court, except to the creditors having suits against it, or against the receivers, pending at the time of such second dividend, and except the moneys which may be retained to pay such creditors; but every creditor who shall have neglected to exhibit his demand before the first dividend, and who shall deliver his account to the receivers before such second dividend, shall receive the sum he would have been entitled to on the first dividend, before any distribution be made to the other creditors.

**Sec. 10876. Debts not exhibited.** After such second dividend shall have been made, the receivers shall not be answerable to any creditor of such corporation or to any person having claims against such corporation, by virtue of any open or subsisting engagement, unless the demand of such creditor shall have been exhibited, and the engagements upon which such claims are founded shall have been presented to the said receivers, in detail and in writing, before or at the time specified by them in their notice of a second dividend.

**Sec. 10877. Distribution of surplus.** After a final dividend is made, and the debts of any such corporation are paid, if there shall remain any surplus in the hands of the receivers, they shall distribute the same among the stockholders of such corporation, in proportion to the respective amounts paid by them, severally, on their shares of stock.

**Sec. 10878. Disposition of moneys retained.** When any suit pending at the time of the final dividend shall be terminated, they shall apply the moneys retained in their hands for that purpose, to the payment of the amount recovered, and their necessary costs and expenses; and if nothing shall have been recovered, they shall distribute such moneys, after deducting their expenses and costs, among the creditors and stockholders of the corporation, in the same manner as herein directed in respect to a second dividend.

**Sec. 10879. Receivers subject to control of court.** The receivers shall be subject to the control of the court, and may be compelled to account at any time; they may be removed by the court, and any vacancy created by such removal or by death, or otherwise, may be supplied by the court.

**Sec. 10880. Accounts.** Within three months after the time herein prescribed for making a second dividend, the receivers shall render a full and accurate account of their proceedings to the court, which shall be referred to a master to examine and report thereon.

**Sec. 10881. Previous notice thereof.** Previous to rendering such account, the receivers shall insert a notice of their intention to present the same, once in each week for three weeks successively, in such paper as the court may direct, and in a newspaper of the county in which notices of dividends are required to be published, if there be one, specifying the time and place at which such account will be rendered.

**Sec. 10882. Duty of master on reference to him.** The master to whom such account shall be referred shall hear and examine the proofs, vouchers, and documents offered for or against such account, and shall report thereon fully to the court.

**Sec. 10883. Effect of settlement of account.** Upon the coming in of such report, the court shall hear the allegations of all concerned therein and shall allow or disallow such account, and decree the same to be final and conclusive upon all the creditors of such corporation, upon all persons who have claims against it upon any open or subsisting engagements, and upon all the stockholders of such corporations.

**Sec. 10884. Further accounts.** Such receivers shall also account from time to time in the same manner, and with the like effect, for all moneys which shall come to their hands after the rendering of such account as hereinbefore provided, and for all moneys which shall have been retained by them for any of the purposes hereinbefore specified, and shall pay into court all unclaimed dividends.

**Sec. 10885. Certain corporations excepted.** The provisions of this chapter shall not extend to any incorporated library or lyceum society, to any religious corporation, or any incorporated academy or select school; nor to the proprietors of any burying ground incorporated under the laws of this state.

**Sec. 10886. Dissolution not to abate suit.** The dissolution of a corporation by a decree of the court, or by the expiration of its charter, or otherwise, shall not abate any suit or proceedings in favor of such corporation which shall have been pending at the time of such dissolution; but all such suits or proceedings may be continued by the receivers who shall have been appointed for such corporation by the court, or by the trustees on whom the estate and effects of such corporation shall have devolved, in the name of such corporation, or in the names of such receivers or trustees, who may be substituted as plaintiffs under the direction of the court in which the suit shall be pending, and subject to such order as the court may deem expedient, in relation to the payment or security of costs.

**Sec. 10887. New suit by receiver.** Whenever a receiver of the property and effects of a corporation has been appointed before its dissolution, or afterwards, new suits may be brought and carried on by any such receivers, either in their own names, or in the name of the corporation for which they shall have been appointed.

**Sec. 10888. Suit commenced by receiver not to abate.** No suit commenced in the name of any such receiver shall be abated by his removal or death; but the same may be continued in the name of the remaining receiver; if there be one, or in the name of the successor of the receiver so removed or deceased, or of the corporation as may be directed by the court in which the suit may be pending.



**Sec. 10889. Suits, how continued.** The court in which any suit or proceeding against a corporation which shall have been dissolved by a decree in chancery or otherwise, shall be pending at the time of such dissolution, shall have power, on the application of either party thereto, to make an order for the continuance of such suit or proceeding, and the same may thereafter be continued until a final judgment or decree shall be had therein.

**Sec. 10890. Appeals.** That any corporation, person, or persons claiming to be aggrieved by any decree or final order of any circuit court in chancery in any proceedings mentioned in this chapter, may appeal therefrom to the supreme court. Such appeal shall be claimed by a written claim delivered or transmitted within forty days from the entry of such decree or final order to the register in chancery of the court where such decree or final order was entered, which said register shall make entry of, and the appellant shall, within forty days, file with said register a bond naming as obligee the said register, and with sufficient sureties approved by the circuit judge, or said court, or a circuit court commissioner of the county wherein said decree was entered, and with such penalty as such judge or commissioner shall approve, conditioned for the diligent prosecution of such appeal and for the performance or satisfaction of any decree or final order of the supreme court against the appellant in the cause, and for payment of all costs that may be awarded against the appellant in said supreme court in the matter of said appeal: Provided, that the motion for such approval shall be on a notice to whom it may concern, of at least six days, to be filed in the office of said register, said notice to contain the penalty and the names of the sureties of the proposed bond, and on the hearing of such motion, any corporation, person, or persons claiming to be interested shall be heard as to the sufficiency of the penalty named and the pecuniary responsibility of the sureties proposed to such bond: And provided further, that in case of such motion being before a circuit court commissioner, the circuit judge or the judge at chambers of the court in which such decree or final order is entered, may, on special motion of any corporation, person, or persons claiming to be interested, order an additional bond and fix the penalty thereof and approve the sureties thereto on proper showing: Provided further, that upon the filing of said bond with approval aforesaid, the appeal shall be deemed perfected and the register in chancery shall, on payment of five dollars to him on behalf of the appellant, make return to the supreme court, and the supreme court shall have power to hear and determine such appeal and all matters concerning the same and shall have power to reverse, affirm, or alter the order or decree appealed from and to make such other order or decree therein as shall be just, in like manner and with like effect as on appeals in suits in chancery according to the existing statutes of the state of Michigan and the rules of the supreme court in such case made and provided: And provided further, that the supreme court while any suit shall be pending therein, may on special motion, give such directions as to said court shall seem proper concerning any stay of proceedings caused by the appeal: And provided further, that the supreme court of the circuit judge of the court where such decree or final order was made shall, on special motion and such proper showing, have power after such appeal is perfected to order an additional bond and fix the penalty thereof and approve the sureties thereto, or to refer such approval to a circuit court commissioner of said county in which the cause shall have been pending: And provided further, that the supreme court aforesaid, or the circuit court, may, concerning any bond aforesaid, order a suit to be brought and prosecuted for the benefit of any person, persons, or corporation as such court may direct, and thereupon such suit may be brought and prosecuted to effect and all moneys collected in such suit shall be disposed of as such court shall direct.

---

**Acts, 1901, No. 68. An Act to amend Section 49 of Act numbered 173 of the Public Acts of Michigan of the Year 1855, etc.**

**Sec. 49. First process against corporation, how served.** The first process against a corporation shall be a summons and shall be served by leaving a copy thereof with the president, cashier, secretary, treasurer, or any other officer, or agent of such corporation, or by leaving such copy at the banking house or office of such

corporation; and upon the return of such service being made such corporation shall be deemed to be in court and the like proceedings as near as may be shall be thereupon had as in cases of suits between individuals.

---

**Acts, 1901, No. 154. An Act to provide for the Incorporation of Companies for the Carrying on of any lawful Business.**

---

**Sec. 1. Corporations may be formed.** When no other provision of statute is expressly applicable, corporations may be formed under this act for the purpose of carrying on any lawful business.

**Sec. 2. Number that may incorporate.** Any number of persons, not less than three, desiring to become incorporated under the provisions of this act, shall adopt, sign and acknowledge articles of association, and cause the same to be recorded in the same manner as provided in case of manufacturing and mercantile corporations, under act two hundred thirty-two, public acts of eighteen hundred eighty-five, as amended, and such articles of association shall state the same matters required to be stated in articles of association of manufacturing and mercantile corporations.

**Sec. 3. Capital stock.** The capital stock of such corporation shall not be less than one thousand dollars, and shall be divided into shares of ten dollars each.

**Sec. 4. To file annual report.** Such corporations shall file an annual report as required by section twelve of said act two hundred thirty-two of the public acts of eighteen hundred eighty-five, and shall in all respects not otherwise expressly provided be subject to the general provisions of said act.

---

**Acts, 1901, No. 206. An Act to prescribe the Terms and Conditions on which Foreign Corporations may be admitted to do Business in Michigan.**

---

**Sec. 1. Certificate of authority. Statement.** It shall be unlawful for any corporation organized under the laws of any state of the United States, except the state of Michigan, or of any foreign country, to carry on its business in this state, until it shall have procured from the secretary of state of this state a certificate of authority for that purpose. To procure such certificate of authority every such foreign corporation or association shall comply with the following provisions: It shall file and record in the office of the secretary of state a certified copy of its charter, or articles of incorporation, and file evidence of appointment of an agent in this state to accept service of process on behalf of said corporation, and shall pay to the secretary of state the requisite filing, recording, and franchise fees. Such corporation, by its president, secretary, treasurer, and superintendent, or any two of them shall make and file with the secretary of state a statement duly sworn to by at least two of such officers, in such form as the secretary of state may prescribe, containing the following facts:

First. The location of its principal office and its principal place or places of business, and the names and addresses of its principal officers.

Second. The location of its principal office and the principal place of business in Michigan, and the name and addresses of the officers or agent of the company in charge of its business in Michigan.

Third. The total value of the property owned and used by the company in its business, giving its location and general character and stating separately the value of its tangible property, of its cash and credits, its franchises, patents, trade marks, formulas, good will;

Fourth. The value of the property owned and used in Michigan and where situated.

Fifth. The total amount of business transacted during the preceding year and the amount of business, if any, transacted in Michigan.

Sixth. Such other facts bearing on the matter as the secretary of state may require, including a statement of the particular purpose, or the particular kind of business for which the company desires admission to this state.

**Sec. 2. Proportion of capital represented in Michigan.** From the papers so filed and the facts so reported and any other facts coming to his knowledge bearing

upon the question, the secretary of state shall determine the proportion of the authorized capital stock of the company represented by its property and business in Michigan. Any such corporation shall have the right on application, to be heard by the secretary of state touching the matter of the determination of the proportion of its capital stock represented by property used and business done in Michigan. Any corporation aggrieved by the decision of the secretary of state, may, within ten days, appeal to a board of appeal consisting of the auditor general, state treasurer, and attorney general, whose decision in the matter shall be final.

**Sec. 3. Fee.** Such company shall pay to the secretary of state a franchise fee of one-half a mill on each dollar of the proportion of its authorized capital stock represented by the property owned and used and business transacted in Michigan, determined as above provided. And in case such corporation is not at the time of admission carrying on any business outside of Michigan, it shall pay a franchise fee on its entire authorized capital stock. But such fee shall in no case be less than twenty-five dollars.

**Sec. 4. Secretary of state to issue certificate. When certificate may be revoked.** When such corporation has fully complied with the provisions of this act, the secretary of state may issue to such corporation a certificate of authority to carry on such business in this state, during the period of its corporate existence, but not exceeding thirty years: Provided, that no such foreign corporation shall be permitted to transact business in this state unless it be incorporated in whole, or in part, for the purpose or object for which a corporation may be formed under the laws of Michigan, and then only for such purpose or object. And the secretary of state shall in the certificate which he issues state under what act such corporation is to carry on business in this state, and such corporation shall have the powers, rights, and privileges and be subject to all the restrictions, requirements, and duties granted to or imposed upon corporations organized under such act: Provided further, that the carrying on in this state by such corporation, of business for which it has not been so admitted, or failure to fully comply with the requirements of the act under which it has been so admitted, shall be sufficient cause for revoking the certificate of authority to do business in this state, and the secretary of state may revoke such certificate and shall promptly notify such corporation of such revocation and the reasons therefor by notice sent by mail to the home office of such corporation.

**Sec. 5. Statement of increase. Additional statements. Penalty for violation of act.** Every corporation which has paid a franchise fee and been admitted to do business in this state, which shall thereafter increase its authorized capital, or shall increase the proportion of its capital stock, represented by property used and business done in Michigan, shall within thirty days after such increase file an additional statement with the secretary of state and pay an additional franchise fee of one-half of one mill on each dollar of the amount of increase of its capital stock represented by property owned and business done in Michigan. And any such corporation shall at any time when requested by the secretary of state, file an additional statement under oath of at least two of its officers, showing the proportion of its property used and business transacted in Michigan. Every corporation subject to the provisions of this act, which shall neglect or fail to comply with its requirements, shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for every month that it continues to transact business in Michigan, without complying with the requirements of this act, to be recovered by action in the name of the people of the state of Michigan in any court of competent jurisdiction.

**Sec. 6. Contracts void.** No foreign corporation, subject to the provisions of this act, shall be capable of making a valid contract in this state until it shall have fully complied with the requirements of this act, and at the time holds an unrevoked certificate to that effect from the secretary of state.

**Sec. 7. Unlawful to act as agent.** It shall be unlawful for any person to act as agent for any foreign corporation not authorized to do business in this state or in any manner to aid in the transaction of the business of such unauthorized foreign corporation in this state. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars for each offense and in default of payment of such fine, shall be imprisoned in the county

jail for a period of not less than thirty days nor more than one year, or he may be punished by both such fine and imprisonment at the discretion of the court.

**Sec. 8. Not applicable to certain corporations.** The provisions of this act shall not be applicable to such foreign corporations as are permitted to do business in this state by license issued by the commissioner of insurance, or by the state treasurer, according to the provisions of law. Nor shall this act be construed to prohibit any sale of goods or merchandise which would be protected by the rights of interstate commerce.

**Sec. 9. "Corporations" defined.** The term "corporations" as used in this act shall be construed to include all associations, partnership associations, and joint stock companies having any of the powers or privileges of corporations, not possessed by individuals or partnerships, under whatever term or designation they may be defined and known in the state where organized.

**Sec. 10. Service of process.** No such corporation having appointed an agent to accept service of process shall have power to revoke or annul such appointment until it shall have filed notice of appointment of some other person in this state as such agent. Service of process may also be made upon any officer or agent of such corporation in this state, or service may be made upon the secretary of state, who shall immediately notify the corporation thus served, by mailing notice thereof and a copy of such process to its address. There shall be paid to the secretary of state at the time of such service a fee of five dollars, which sum may be taxed as costs to the plaintiff in case he prevails in the proceeding.

**Acts, 1903, No. 232.** An Act to revise and consolidate the Laws providing for the Incorporation of Manufacturing and Mercantile Companies or any Union of the two, and for the Incorporation of Companies for carrying on any other lawful Business, except such as are precluded from Organization under this Act by its express provisions, and to prescribe the Powers and fix the Duties and Liabilities of such Corporations.

**Sec. 1. Who may incorporate, and for what.** Any three or more persons desiring to become incorporated for the purpose of carrying on any manufacturing or mercantile business, or any union of the two, or for buying, selling, and breeding cattle, sheep, and horses, or other live stock, or for engaging in maritime commerce or navigation, or for the purchasing, holding, and dealing in real estate, or for conducting a warehouse and storage business, or for erecting and owning buildings to be occupied or leased for dwelling houses, halls, or business purposes, or for the production and supplying of gas and electricity for lighting, fuel, or other purposes, or for printing, publishing, and book-making, or for carrying on any other lawful business, except such as are excluded by section thirty-six of this act, may, by complying with the provisions of this act, with their successors and assigns, become a body politic and corporate.

**Sec. 2. Articles of association, blanks for. To state name. Proviso as to name. Purpose. Operations where conducted. Capital stock. Fifty per cent must be subscribed. Common and preferred stock. Shares. Stock may be paid in cash or other property. Itemized description of property. Valuation. Office. Duration. Stockholders, etc. How stock may be increased or diminished. May fix price of increased stock to stockholders. Certificate of increase or diminution to be recorded. Proviso. Regulating business and defining powers. Proviso.** The articles of association of every such corporation shall be made on suitable and uniform blanks which it is hereby made the duty of the secretary of state to furnish on application free of charge, or upon blanks substantially uniform approved by the secretary of state, which articles shall be signed by the persons associating in the first instance and acknowledged before some person authorized by the laws of this state to take acknowledgments of deeds, and shall state:

First, the name assumed and by which the corporation shall be known in law: Provided, no name shall be assumed already in use by any other existing corporation of this state, or corporation lawfully carrying on business in this state, or so nearly similar as to lead to uncertainty or confusion.

Second, distinctly and definitely, the purpose or purposes for which the corporation is formed, and it shall not be lawful for said corporation to divert its operations, or appropriate its funds to any other purpose, except as hereinafter provided.

Third, the principal place or places at which its operations are to be conducted.

Fourth, the amount of the total authorized capital stock, which shall not be less than one thousand dollars, and not more than twenty-five million dollars; the amount of capital stock subscribed, which shall not be less than fifty per cent. of the authorized capital stock; the articles may provide for common and preferred stock subject to section thirty-five, and in that case shall contain an exact statement of the terms upon which the common and preferred stocks are created, and the amount of each subscribed, and the amount of each paid in.

Fifth, the number of shares into which the capital stock is divided, which shall be of the par value of ten dollars or one hundred dollars each.

Sixth, the amount of capital stock paid in at the time of executing the articles, which shall not be less than ten per cent. of the authorized capital, and in no case less than one thousand dollars, except in case of a capitalization of two thousand dollars or under, when it shall be twenty-five per cent. thereof, and the amount so paid in shall not be reduced below such per cent. of its capital. Such capital stock may be paid in, either in cash or in other property, real or personal; but where payment is made otherwise than in cash there shall be included in the articles an itemized description of the property in which such payment is made, with the valuation at which each item is taken, which valuation shall be conclusive in absence of actual fraud: Provided, that only such property shall be so taken in payment for capital stock as the purposes of the corporation shall require, and only such property as can be sold and transferred by the corporation, and as shall be subject to levy and sale on execution, or other process issued out of any court having competent jurisdiction, for the satisfaction of any judgment or decree against such corporation: And provided further, that there shall be made and attached to any such articles of association an affidavit by at least three of the organizers of such corporation, that they know the property described in such articles of association and that the same has been actually transferred to such corporation, and that such property is of the actual value therein stated.

Seventh, the place in the state of Michigan where the office of the company is located.

Eighth, the term of years the corporation is to exist, which shall not be to exceed thirty years.

Ninth, the names of the stockholders, their respective residences, and the number of shares subscribed for by each.

The amount of the capital stock and number of shares of every corporation organized under this act may be increased or diminished at any annual meeting of the stockholders, or at a special meeting expressly called for that purpose, by a vote of two-thirds of the capital stock of the corporation. In voting upon the increase of the capital stock, the stockholders shall have power, by the same statutory majority, to fix the value of, and the price at which, the increase of the capital shall be subscribed and paid for by the stockholders, but not less than par, as well as the time and manner of the subscription and payment, and by the same vote to authorize the directors of the corporation to sell, at not less than the price so fixed, any part of such increase not subscribed by the stockholders, after they have had a reasonable opportunity to make subscription of their proportionate shares thereof; and to make provision for calling in and cancelling the old and issuing new certificates of stock; but nothing herein contained shall in any way operate to discharge any company, which may diminish its capital stock, from any obligation or demand that may be due from said company. When a corporation shall so increase or diminish its capital stock, the president and a majority of the directors shall make a certificate thereof, which shall be signed by them and recorded and returned as provided herein for recording and returning the original articles of incorporation, and such increase or diminution shall commence and be operative from the date when such certificate is recorded in the office of the secretary of state: Provided: that in order to entitle such certificate to be recorded it must show that at least fifty per cent. of the total authorized stock, after such increase, has been subscribed, and that at least ten per cent. of the total authorized capital has been actually paid in. The articles of incorporation, besides defining the purposes for

which the corporation is formed, as provided in sub-section second above, may also contain any provision which the incorporators may deem advantageous for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, defining, limiting, and regulating the powers of the corporation, the directors, and the stockholders, or any class or classes of stock and stockholders: Provided, the same be not inconsistent with this act, or the general statutes of this state regulating corporations.

**Sec. 3. First meeting of stockholders. Waiver of notice.** When any number of persons shall have associated according to the provisions of this act, any two of them may call the first meeting of the stockholders, at such time and place as they may appoint, by giving notice thereof by publishing the same in some newspaper published in the county in which its office is located, and if there is no newspaper published in such county, then by publishing the said notice in some newspaper published in an adjoining county, at least two weeks before the time appointed for such meeting. But said notice may be waived by a writing signed by all the subscribers to the capital stock of said corporation, specifying the time and place for said first meeting, which writing shall be entered at full length upon the records of the corporation; and the first meeting of any such corporation, which has been held pursuant to such written waiver of notice, shall be valid.

**Sec. 4. Directors.** The stock, property, affairs, and business of every manufacturing or mercantile corporation shall be managed by not less than three directors, who shall be chosen annually by the stockholders, at such time and place as shall be provided by the by-laws of said corporation, and who shall be stockholders, and shall hold their offices for one year, and until others shall be chosen in their stead.

**Sec. 5. Failure to elect at annual meeting. Proviso.** If an election of directors in any such corporation shall not take place at the annual meeting thereof, in any year, such corporation shall not thereby be dissolved, but an election may be had at any time thereafter to be fixed upon, and notice thereof to be given by the directors: Provided, that in case the directors shall refuse or neglect so to do, any three of the stockholders may call a meeting of the stockholders for the election of directors, by giving the notice as prescribed in section three of this act.

**Sec. 6. Officers. Secretary and treasurer to be residents.** The board of directors shall elect one of their number to be president of the corporation and board, and one or more of their number to be vice president, and shall also choose a secretary and treasurer, and assistants if deemed necessary. The secretary and treasurer shall reside and transact the corporation's business at its office within this state, unless the articles, or an amendment thereof duly made, provide for the location of the principal office of the corporation without this state. The directors shall appoint such other officers and agents as the by-laws of the corporation shall prescribe, who shall hold their offices according to their contracts, or until others are appointed in their stead. If the stockholders so direct the same person may hold the office of secretary and treasurer.

**Sec. 7. Vacancy in directors.** The directors of such corporation shall have power to fill any vacancy which may happen in their board by death, resignation, or otherwise, for the current year.

**Sec. 8. Where corporation may conduct its business.** It shall be lawful for any corporation organized or existing under the provisions of this act to conduct its business in whole or in part at any place or places within the United States or any foreign country.

**Sec. 9. Prior to commencing business articles of association must be recorded. Duty of secretary of state and county clerk in matter of recording. Prima facie evidence of organization.** As to companies organized under Act 41, Laws of 1853. Before any corporation, organized under this act to operate in this state, shall commence business, the president shall cause the articles of association to be recorded, at the expense of said corporation, in the office of the secretary of state of this state, and in the office of the county clerk of the county in which such operations are to be carried on, and before any corporation organized hereunder, to operate outside this state, shall commence business, the president shall cause the articles of association to be recorded at the expense of the corporation, in the office of the secretary of state and in the office of the county clerk of the county in this state where the office of the corporation is located. The secretary of state and the county

clerk, in whose office such articles of association shall be recorded, shall each certify upon every such articles of association recorded by him, the time when it was received, with a reference to the book and page where the same is recorded, and the record, or transcript of the record, certified by the secretary of state of this state, and under the seal thereof, shall be received in all the courts of this state as prima facie evidence of the due formation, existence, and capacity of such corporation in any suit or proceedings brought by or against the same. And in case of companies organized under act number forty-one, laws of eighteen hundred and fifty-three and amendments thereto, and whose original articles of association and amendments are filed in the office of the secretary of state, copies of such articles of association or amendments duly authenticated by the secretary of state under the seal of the state, shall be received in all courts of this state as prima facie evidence of the things therein stated.

**Sec. 10. Quorum. Stockholders, meeting. Vote.** A majority of the directors of every manufacturing or mercantile corporation convened according to the by-laws, shall constitute a quorum for the transaction of business; and the stockholders holding a majority of the stock, at any meeting of the stockholders, shall be capable of transacting the business of that meeting, except as herein otherwise provided; and at all meetings of such stockholders each share shall be entitled to one vote. Stockholders may appear and vote in person or by proxy duly filed.

**Sec. 11. Subscription to capital stock called in by installment. Neglect to pay. Sale of stock for. Rights of purchaser of stock so sold.** The directors may call in the subscription to the capital stock of such corporation by installments, in such proportion and at such times and places as they shall think proper, by giving notice thereof, as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment for the space of thirty days after the same shall have become due and payable, and after he shall have been notified thereof, said corporation may recover the amount of said installment from such negligent stockholder in any proper action for that purpose, or so much of the stock of such delinquent stockholder as may be necessary to pay such installment so due, may be sold by the directors at public auction at the office of the secretary of the corporation, giving at least thirty days' notice of such sale in some newspaper published in the county where said office is located, if there is a newspaper published in such county; if not, then in some newspaper published in some adjoining county; and in case of a sale of said stock the proceeds thereof shall be first applied in payment of the installment called for and the expenses of the sale, and the residue, if any, shall be refunded to the delinquent stockholder. In case the proceeds of such sale shall be insufficient to pay said installment, said corporation may recover the balance from such negligent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so purchased.

**Sec. 12. Annual duplicate reports. Proviso. Fiscal year. What to state. Secretary of state to furnish blanks. How signed and verified. Duty of county clerk. Penalty for neglect to make report. Termination of corporate existence, etc. Secretary of state and county clerk to be notified. Penalty for neglect to notify. When neglect to file report deemed wilful.** Every corporation subject to this act, including every foreign corporation admitted to carry on business in this state under the provisions of this act, shall annually, in the month of January or February, make duplicate reports showing the condition of such corporation on the thirty-first day of December next preceding, on suitable blanks to be furnished by the secretary of state, as hereinafter provided: Provided, flour milling corporations shall make and deposit annual reports in the month of July for the year ending June thirty, preceding: Provided further, that any such corporation, which shall make and file with the Secretary of State a statement in writing certified to by its president and secretary, showing that its fiscal year ends at a time other than December thirty-first and that it is its custom to take an inventory and balance its accounts at the close of such fiscal year, and cannot make an accurate report for any other date, shall make its report showing its condition at the close of its fiscal year, such report to be filed within sixty days after such close of its fiscal year. Such reports shall state the amount each of common and preferred capital stock authorized, and the amount thereof subscribed for, and the amount thereof actually paid in in cash, and the amount thereof paid in property; the total value as near as may be estimated, of all property owned by the corporation; the value of different items of classes of pro-



property as follows: Real estate used in its business; real estate not used in its business; goods, chattels, merchandise, material, and other tangible property; patent rights, copyrights, trademarks, and formulas; good will; and all other property, specifying the kind; value of all credits owing to the corporation; the amount of debts of the corporation; the name and postoffice address of each stockholder and the number of shares of preferred and common stock held by him at the date of such report; the name and postoffice address of each officer and director of the corporation, and such other information as the secretary of state may require. It shall be the duty of the secretary of state in the month of December in each year, or in case of corporations whose fiscal year ends prior to December thirty-first, on application of such corporation, to mail to each corporation which is subject to the provisions of this act, suitable blanks on which shall be printed a copy of this section. Such reports shall be signed by a majority of the board of directors and verified by the oath of the secretary of the corporation, and deposited in the office of the secretary of state within the said month of January or February, or within sixty days after the close of such fiscal year, accompanied by a filing fee of fifty cents. The secretary of state shall carefully examine such reports, and if upon such examination they shall be found to comply with all the requirements of this section, he shall then file one of them in his office, and shall forward the other by mail or express to the county clerk of the county in which the office in this state, for the transaction of the business of said corporation, is situated. And it shall be the duty of such county clerk, upon receipt of such report, to immediately cause the same to be filed in his office. If any corporation neglect or refuse to make and file the reports required by this section within the time herein specified, and shall continue in default for ten days thereafter, its corporate powers shall be suspended thereafter until it shall file such report, and it shall not maintain an action in any court of this state upon any contract entered into during the time of such default; and any director of such corporation so in default, who has neglected or refused to join in the making of such report, shall be liable for all the debts of such corporation contracted since the filing of the last report of such corporation, and shall also be liable to such corporation for any damages sustained by it by reason of such refusal or neglect. And in case a corporation organized or doing business under the provisions of this act shall be dissolved by process of law, or whose term of existence shall terminate by limitation, or whose property and franchises shall be sold at mortgage sale, or at private sale, or if for any reason the attitude of the corporation toward the state shall be changed from that set forth in the articles of association, it shall be the duty of the last board of directors of such corporation within thirty days thereafter to give written notice of such change to the secretary of state, signed by a majority of such directors and accompanied by a recording fee of fifty cents, which said notice shall be recorded as amendments are required to be recorded. And in case of neglect to give such notice, they shall each be subject to a penalty of five dollars for each and every day during the continuance of such neglect or refusal. The neglect or refusal to file the report, or to record the notice required by this section to be filed or recorded, shall be deemed wilful when such report or notice is not filed or recorded within the time herein limited. Whenever any corporation has neglected or refused to make and file its report within twenty days after the time limited in this section, the secretary of state shall cause notice of that fact to be given by mail to such corporation, directed to its postoffice address. The certificate of the secretary of state or his deputy, of the mailing of such notice, shall be prima facie evidence in all courts and places of that fact, and that such notices were duly received by said corporation.

**Sec. 13. Corporate powers.** Every corporation organized or existing under this act shall have power to have succession by its corporate name for the period limited in its charter, or by this act; to sue and be sued in any court of law or equity, with the same rights and obligations as a natural person; to make and use a common seal and alter the same at pleasure; to ordain and establish by-laws for the government and regulation of its affairs, and to alter and repeal the same; to elect all necessary officers and to appoint and employ such agents as the business may require.

**Sec. 14. Power to hold property. May issue stock in payment for property. Incidental powers.** Every such corporation shall have power to purchase, hold, and convey all such real and personal estate as the purposes of the corporation



shall require, and all other real and personal estate which shall have been bona fide conveyed or mortgaged to said corporation by way of security, or in satisfaction of debts. Any corporation formed under this act may purchase real or personal property necessary for its business, and issue its authorized capital stock to the amount of the value thereof in payment therefor, and the capital stock so issued shall be full paid stock, and not liable to any further call, neither shall the holder thereof be liable to any further payment under any of the provisions of this act, except the liability imposed by section twenty-nine; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property shall be conclusive. And in addition to the powers hereinbefore enumerated, every corporation organized under this act shall possess and exercise all such rights and powers as are necessarily incidental to the exercise of the powers expressly granted herein. It may also purchase and hold any grant of land made by the government to aid in any work of internal improvement.

**Sec. 15. Books of account, where kept. Inspection of. Annual statement.** The books of every such corporation containing their accounts shall be kept, and shall at all reasonable times be open in the city, village, or town where such corporation is located, or at the office of the treasurer of such corporation, within this state, for inspection by any of the stockholders of said corporation, and said stockholders shall have access to the books and statements of said corporation and shall have the right to examine the same in said city, village, or town, or at said office; and as often as once in each year a true statement of the accounts of said corporation shall be made and exhibited to the stockholders.

**Sec. 16. Stock deemed personal property, transfer of. Lien on.** The stock of every such corporation shall be deemed personal property, and be transferred only on the books of such corporation, in such form and manner as their by-laws shall prescribe, and such corporation shall at all times have a lien upon all the stock or property of its members invested therein, for all debts due from them to such corporation.

**Sec. 17. Amendment of articles of association.** Every corporation organized or existing under the provisions of this act may at any annual meeting or any meeting duly called for that purpose, by a resolution adopted by a vote of two-thirds in interest of its capital stock, amend its articles of association in any manner not inconsistent with the provisions of this act, but such amendment shall not become operative until a copy of such resolution, signed by the president and secretary of the corporation, shall have been recorded as is provided herein for the recording of original articles of association, when such amendments shall have the same force and effect as though said amendments had been included in the original articles, and the record, or a copy of the record of such resolution, certified as provided in section nine, shall be received in all courts of this state, as prima facie evidence of the things therein stated.

**Sec. 18. Removal of place of business. Certificate of.** Any corporation organized or existing under the provisions of this act may remove its place of business from any city, village, or town in this state, where it is or may be located, to any other city, village, or town in this state, by a vote of two-thirds of its stockholders in interest. But in case of a removal from one county to another, the president and secretary of such corporation shall attach to their articles of association, a certificate that such corporation has thus removed and said articles of association, together with said certificate, shall be left for record immediately on such removal, in the office of the county clerk of the county to which such corporation shall remove, and they shall be recorded by such clerk, at full length in the book kept by him for that purpose. And the president and secretary of such corporation shall immediately upon such removal, cause a certificate thereof to be recorded in the office of the secretary of state, and also in the office of the county clerk of the county from which it removes.

**Sec. 19. Return of articles of association after recording. Fee for recording.** The secretary of state and any county clerk, after recording the articles of association and certificates specified by this act to be recorded by them, shall return the same, each with his endorsement of record thereon, to said corporation; and for recording the articles of association and certificates required in this act, the secretary of state and county clerk shall each be entitled to receive at the rate of twenty cents for each folio.

**Sec. 20. May establish office outside of state and hold stockholders' meetings. Proviso, service of process. Offices, how located; not to be changed within year.** It shall be lawful for any corporation organized or existing under the provisions of this act to establish an office or offices for the transaction of business without this state and within the United States and to hold any meeting of the stockholders or directors of such company at such office so provided for: Provided, that there shall always be one business office within this state, and that service of any notice or process may be made upon the agent in charge of such office, which shall be binding upon such corporation. The place of holding such offices shall be fixed by a vote of a majority of stockholders at any lawful meeting called for that purpose, and after being fixed shall not be changed within one year, and shall be certified by the directors of such corporation to the secretary of state of this state within two months from the time such office or offices were so located.

**Sec. 21. Refunding of capital stock, prior to payment of all debts, to render stockholders liable for.** If the capital stock of any such corporation shall be withdrawn, and refunded to the stockholders before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders of such corporation shall be jointly and severally liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to him or them respectively.

**Sec. 22. Dividend, when directors liable for declaring.** If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend, the payment of which would render it insolvent, knowing such corporation to be insolvent, or that the payment of such dividend would render it so, the directors assenting thereto shall be jointly and severally liable in an action founded on this statute, for all debts due from such corporation at the time of paying or declaring such dividend.

**Sec. 23. Other cases, when directors liable.** If any corporation organized or existing under this act shall violate any of its provisions, the directors ordering or assenting to such violation, shall be jointly and severally liable in an action founded on this statute, for all debts contracted after such violation as aforesaid, to the extent of three times the amount paid in on the stock standing in the name of such director in any such corporation.

**Sec. 24. Lien of corporation upon stock of stockholders, how enforced.** Any corporation organized or existing under this act, which has a lien upon the stock of any stockholder therein as provided by the sixteenth section, may give notice to such stockholder that unless he shall pay his indebtedness to said corporation within three months from the time of giving such notice, then such corporation will proceed to sell and transfer the stock of such stockholder in said corporation, and upon default of payment said corporation may sell the stock of such indebted stockholder as hereinafter provided, and any such corporation may prescribe by its by-laws the manner of giving the notice required by this section.

**Sec. 25. Idem.** Such corporation may, at any time within six months after it shall have given the notice required by the preceding section to such indebted stockholder of its intention to sell such stock, and the three months notice shall have expired, advertise in one or more newspapers published in said county where such corporation is located, and if there is no newspaper published in said county, then in a newspaper published in an adjoining county, giving at least three weeks' notice of the time and place when and where such stock will be sold, and at the time and place of sale shall state the amount due from such stockholder to such corporation, and then proceed to sell for cash at public auction, to the highest bidder therefor, so much of the stock of such indebted stockholder as shall pay in full the indebtedness of such stockholder to such corporation, together with the necessary costs of sale; and if the sale of the entire stock of such indebted stockholder shall not be sufficient to pay in full the claim of said corporation on said stock, such corporation shall credit the amount received for such stock, less the costs of sale, to said indebted stockholder, and may proceed to collect the remainder of their debt by any proper action for that purpose.

**Sec. 26. Issue of certificates to purchasers of stock sold.** Whenever the purchaser of said stock shall have complied with the conditions of said sale, the corporation shall issue new certificates of stock to such purchaser, or to their order, and shall cancel upon the books of the corporation the certificates of such indebted stock-

holders, and the new certificates so issued shall entitle the holders thereof to all the privileges, rights, and interests of a stockholder in such corporation.

**Sec. 27. When stock is pledged to third party, corporation may sell equity of redemption. Statement from person holding stock as collateral.** Whenever any stockholder in any such corporation shall have made a transfer or assignment of his stock as security for his indebtedness to a third party, and afterwards shall become a debtor to such corporation, such corporation may sell the equity of redemption of such stock in the same manner as is provided for the sale of stock on which it has a lien, and shall credit the amount received from such sale to such indebted stockholder. Such corporation may require the party holding the transfer or assignment of such stock, to give a statement to the treasurer of such corporation, under oath, of the amount for which said stock was pledged; and if said party shall not give such a statement at or before the time such sale is to take place, he shall forfeit all claim and lien on such stock or any part thereof, and such corporation may sell the same as herein provided.

**Sec. 28. Liens acquired by attachment not to be affected.** Nothing contained in the four preceding sections shall affect any lien or right acquired by any other party by virtue of any attachment or levy of execution upon the stock of any stockholder in any such corporation.

**Sec. 29. Liability of stockholders for labor debts, enforcement of.** The stockholders of all corporations organized or existing under this act shall be individually liable for all labor performed for such corporations, which said liability may be enforced against any stockholder by action founded on this statute, at any time after an execution shall be returned unsatisfied, in whole or in part, against the corporation, or at any time after an adjudication in bankruptcy against said corporation, and the amount due on such execution shall be prima facie evidence of the amount recoverable, with costs against any such stockholder; and if any stockholder shall be compelled by any such action to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the responsible stockholders to contribute their equal part of the sum so paid by him as aforesaid, and may sue them, jointly or severally, or any number of them, and recover in such action the amount due from the stockholder or stockholders so sued.

**Sec. 30. Service of process, etc., against corporation.** Service of any notice or legal process against any corporation formed or existing under this act may be made on the president or any vice president, secretary, treasurer, assistant secretary or treasurer, general manager, superintendent, cashier, or any other officer of the corporation, or upon the agent in charge of any business office of such corporation within this state, or if neither of such officers or agent can be found, then such service may be made by posting a true copy thereof in some conspicuous place at the business office of the corporation in this state.

**Sec. 31. Assessment and taxation. Proviso.** All corporations formed or existing under this act shall be liable to be assessed for all real and personal estate held by them in this state, at its true value, and shall pay thereon a tax for township, village, city, county, and state purposes, the same as other real and personal estate, and such tax shall be assessed, collected, and paid in the same manner as other taxes on real and personal estate are required to be assessed, collected, and paid: Provided, nothing herein contained shall authorize the taxing of the capital stock of such corporation as such capital stock.

**Sec. 32. Property liable to execution for claims against corporation only.** That all articles of machinery, materials for manufacturing, or manufactured articles belonging to any such corporation, shall be free from seizure by execution or distress, for any debts or claims for rents or services, in whose hands soever they may be, except such execution or claim be against such corporation.

**Sec. 33. Proceedings for continuation of corporate existence by corporation about to expire by limitation of time.** It shall be lawful for any corporation organized or existing under the provisions of this act, whose corporate existence is about to terminate by limitation of law, at its annual meeting next preceding, or at a special meeting called for that purpose, to be held within one year immediately preceding the date of such termination, by a vote of two-thirds of its capital stock, to direct the continuance of its corporate existence for such further term, not exceeding thirty years, as may be expressed in a resolution for that purpose. Upon the adoption of such resolution by the stockholders, it shall be the duty of the president and secre-

tary to make, sign, and acknowledge articles of association, as in the case of a new corporation, to which shall be appended a copy of such resolution verified by the oath of the secretary, which articles of association and copy of resolution shall be recorded, certified, and returned as is provided herein in case of a new corporation, and the record, or a transcript of the record, certified by the secretary of state of this state under the seal thereof, shall be prima facie evidence of the things therein contained. Upon the expiration of the time limited for the existence of such old corporation, a new corporation shall be deemed to be formed by such articles of association, which shall at once succeed to all the property and rights of action of the old corporation, and shall be liable for all of its debts or other obligations, and the officers of the old corporation shall succeed to like offices in the new corporation, and every stockholder in the old corporation shall be, to a like extent, a stockholder in the new corporation.

**Sec. 34. Certain law, when to apply.** To corporations organized or existing under the provisions of this act, in the absence of any applicable provision herein contained, the provisions of chapter two hundred thirty of the compiled laws of eighteen hundred ninety-seven may be applied.

**Sec. 35. Power to create and issue two kinds of stock. Holder entitled to dividends. Proviso. When insolvent, remainder of assets payable to preferred stock.** Any such company shall have power to create and issue certificates for two kinds of stock, viz.: general or common stock, and preferred stock, which preferred stock shall at no time exceed two-thirds of the actual capital paid in, and shall be subject to redemption at par at a certain time to be fixed by the by-laws of said corporation, and to be expressed in the certificates therefor. And the holder of such preferred stock shall be entitled to a fixed dividend, payable quarterly, half-yearly, or yearly, which said dividend shall be cumulative, payable at the time expressed in said certificate, not to exceed eight per cent. per annum, before any dividend shall be set apart or paid on the common stock. In no event shall the holder of such preferred stock be individually or personally liable for the debts or other liabilities of said corporation, excepting debts for labor. Said corporation shall be controlled by a board of directors elected by the preferred and common stockholders, excepting when otherwise provided in the articles of association or amendments thereto: Provided always, If at any time upon a fair valuation of the assets of the corporation the common stock shall be impaired in an amount equal to ten per cent. thereof or any dividend due on the preferred stock shall remain unpaid for sixty days then holders of the preferred stock shall have an equal right with the common stock share and share alike to participate in the election of directors and control of said corporation. If for any reason said corporation shall cease business or become insolvent then after the payment of all liabilities and debts the remainder of the assets of said corporation shall be applied first in payment in full of all preferred stock and then unpaid dividends due thereon, and the balance divided pro rata, share and share alike among the holders of the common stock. Every corporation organized or existing under the provisions of this act may by a vote of three-fourths in interest of its capital stock amend its articles of association providing for the issue of preferred and common stock, in accordance with this section, in the same manner and with the same effect as is now provided by section seventeen of this act, relating to amending articles of association.

**Sec. 36. Corporations not included in this act.** This act shall not include nor apply to any of the corporations provided for in the following statutes: Chapters one hundred sixty to one hundred sixty-four, both inclusive; chapters one hundred sixty-six to one hundred eighty, both inclusive; chapter one hundred eighty-four, chapters one hundred eighty-six and one hundred eighty-seven, both inclusive; chapters one hundred ninety-three to two hundred twenty-nine, both inclusive, of the compiled laws of eighteen hundred ninety-seven, as amended.

The laws herein referred to relate to non-trading corporations.

**Sec. 37. Corporations included in this act. Acts repealed. Corporations now existing to be organizations under this act. Proviso. Further proviso, as to continuation of rights and powers.** This act shall include and apply to all the corporations provided for in the following statutes: Chapters one hundred fifty-eight, one hundred eighty-one, one hundred eighty-two, one hundred eighty-three, one hundred eighty-five, one hundred eighty-eight, one hundred ninety, one hundred ninety-one and one hundred ninety-two of the compiled laws of eighteen hundred

ninety-seven, as amended, and in addition shall repeal all other acts and parts of acts inconsistent with the provisions of this act. But the repeal of the foregoing acts shall not dissolve any corporation formed or existing under them, and all corporations of the nature of the corporations authorized to be organized under this act, now organized and existing under said several acts in this section mentioned, or either of them, shall be deemed and taken to be organizations under this act, and all rights, obligations, and liabilities contracted, acquired, or incurred by any of such last mentioned corporations thereunder, or under the provisions of any law now in force, not inconsistent with the provisions of this act, shall continue of the same force and effect as though such acts or laws had not been repealed; and all such corporations from and after the taking effect of this act, shall be subject to all the provisions hereof, as fully as though such organizations had been perpetual thereunder, and such organizations may continue to carry on the business specified in their articles of association under the provisions of this act as lawfully as if said acts mentioned in this section were not repealed: Provided, that nothing in this act contained shall be construed as in any wise affecting any other corporations whatever, organized under the several above named acts, for purposes other than those mentioned in section one of this act, but as to all such corporations the said several acts shall remain in full force. All corporations hereafter organized for any of the purposes provided for in this act shall incorporate under this act: And provided further, that any corporation mentioned or referred to in this section which, under the law under which it was organized, had the right or power to use the streets, lands, and squares of any city, town, or village for its corporate purposes, with the consent of the municipal authorities thereof, and under such reasonable regulations as they might prescribe, shall continue to have such right or power under this act as they enjoyed at the time of the passage of act number two hundred thirty-two of the public acts of nineteen hundred three, of which this act is an amendment.

---

### **Acts, 1903, No. 35. An Act to amend Section 3 of Act Number 128 of the Public Acts of 1855, etc.**

**Sec. 3. With whom list of shares to be filed.** Every banking, insurance, mining, plank road, or other incorporated company, which issues script or shares, shall within ninety days after the passage of this act, file with the secretary of state a list of the number of shares issued by said corporation, and the names of the owners thereof and their post office addresses, with the number of shares owned by each; and annually thereafter shall file with said secretary of state during the months of January or February, in each and every year, a statement similar to that above required, showing the ownership of the shares of said corporation at the day of the date of said statement; all of which statements, including the first, shall be made by one of the officers of said company, under oath; Provided, that corporations which file an annual report with the secretary of state containing a list of stockholders with the post office addresses and the number of shares held by each, shall not be required to file a separate list under this act.

---

### **Acts, 1905, No. 328. An Act to provide for the Extension of the Corporate Life of Corporations, etc.**

**Sec. 1. How and when corporations may extend corporate existence.** Any corporation, organized under the general laws of this state, except those whose reorganization or extension is provided for by existing laws, whose term is about to expire by limitation, may at any time within two years next preceding the expiration of such term, by a vote of at least two-thirds of its capital stock at any annual meeting or at any special meeting of its stockholders called for that purpose, and in case the corporation has no capital stock by a majority vote of the members thereof, direct the continuance of its corporate existence for such further term, not exceeding thirty years from the expiration of its former term, as may be expressed in a resolution for that purpose. Upon the adoption of such resolution by the stockholders voting in person or by proxy, duly filed, at the annual meeting or any spe-

cial meeting called in accordance with the by-laws of the corporation, it shall be the duty of the president and secretary of the stockholders' meeting, to make, sign, and acknowledge duplicate articles of association, to which shall be appended a copy of the proceedings of such stockholders' meeting, certified by the secretary and verified by his oath, which articles of association shall be filed in the same public offices where the original articles were required to be filed, and be recorded in those offices at the expense of said corporation, and the copies so filed, or the record thereof, or the certified copy of either of such records, shall be prima facie evidence of the facts therein recited. Provided, the franchise fee provided by law shall apply and be paid by such corporation re-incorporated hereunder.

**Sec. 2. Renewed term, when to begin, etc.** The renewed term of such corporation shall begin from the expiration of its former term, and a corporation which has thus been renewed shall be the same corporation, and hold and own, all the rights, franchises, and property held and owned by the corporation before renewal, and be subject to all its liabilities, and have the same stockholders and members and the same officers. The articles of association and by-laws thereof may be changed or amended by the corporation in the manner required by law.

---

**Acts, 1907, No. 141.** An Act to amend Section 1 of Act No. 112 of the Public Acts of 1885, entitled "An Act to secure the Minority of stockholders in Corporations organized under General Laws, the Power of Electing a representative Membership in Boards of Directors," the same being Section 8553 of the Compiled Laws of 1897, as amended by Act No. 223 of the Public Acts of 1903, approved June 18, 1903, and as further amended by Act No. 61 of the Public Acts of 1905, approved April 19, 1905.

**Sec. 1. Rights of stockholders in selection of directors. Directors elected annually. Proviso as to amendment of by-laws. Proviso as to certain associations.** In all elections for directors of any corporation organized under any general law of this state, other than municipal, insurance, and banking corporations, every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him for as many persons as there may be directors to be elected, or to cumulate said shares, and give one candidate as many votes as will equal the number of directors multiplied by the number of shares of his stock; or to distribute them on the same principle among as many candidates as he shall think fit. All such corporations shall elect their directors annually, and the entire number of directors shall be balloted for at one and the same time and not separately: Provided, that the by laws of any such corporation shall not be so amended as to reduce the number of directors of such corporation, in case the votes of a sufficient number of shares are recorded against such proposed amendment, which, if cumulatively voted, as herein provided, would elect one or more directors, where the same number of shares, if cumulatively voted, would not be sufficient to elect the same number of directors of the reduced board: Provided further, that associations formed for social, yachting, hunting, boating, fishing, and rowing purposes, under act number twenty-two of the public acts of eighteen hundred eighty-three, approved April ten, eighteen hundred eighty-three, entitled "An act to authorize the formation of clubs for social purposes", the same being section seven thousand seven hundred thirty-three to seven thousand seven hundred thirty-nine, both inclusive, of the compiled laws of eighteen hundred ninety-seven, or under section seven thousand six hundred sixty-seven of the compiled laws of eighteen hundred ninety-seven, may elect a portion of their directors for a longer term than one year, as may be provided in their by-laws.

---

**Acts, 1909, No. 3. An Act to amend Section 1 of Act Number 256 of the Public Acts of 1881, etc.**

**Sec. 1. Venue.** In cases where the plaintiff is a resident of the State of Michigan suits may be commenced at law or in equity in the circuit court for any county

in this state where the plaintiff resides or where service of process may be had, and suits at law may be commenced before any justice of the peace in such county, against any corporation not organized under the laws of this state, by service of a summons, declaration or chancery subpoena, within the state of Michigan, upon any officer or agent of the corporation, or upon the conductor of any railroad train, or upon the master of any vessel belonging to or in the service of the corporation against which the cause of action has accrued. And where the plaintiff is a non-resident of the state of Michigan, suits may be commenced in like manner against such corporations, in all cases where the cause of action accrued within the state of Michigan: Provided, that in all cases, except before justices of the peace, no judgment shall be rendered for sixty days after the commencement of suit, and the plaintiff shall, within thirty days after commencement of suit, send notice by registered letter to the corporation defendant at its home office.

---

## Minnesota.

### Constitution.

---

#### Article X.

**Sec. 1. Corporations defined. Powers.** The term "corporations," as used in this article, shall be construed to include all associations and joint stock companies having any of the powers and privileges not possessed by individuals or partnerships, except such as embrace banking privileges, and all corporations shall have the right to sue, and shall be liable to be sued in all courts, in like manner as natural persons.

**Sec. 2. Not to be created by special act.** No corporation shall be formed under special acts, except for municipal purposes.

**Sec. 3. Liability of stockholders.** Each stockholder in any corporation, excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business, shall be liable to the amount of stock held or owned by him.

**Sec. 4. Lands taken for public way.** Lands may be taken for public way, for purpose of granting to any corporation the franchise of way for public use. In all cases, however, a fair and equitable compensation shall be paid for such land, and damages arising from the taking of the same; but all corporations being common carriers, enjoying the right of way in pursuance of the provisions of this section, shall be bound to carry the mineral, agricultural and other productions or manufactures on equal and reasonable terms.

---

#### Statutes.

### Rev. Laws, 1905, c. 58. Corporations.

---

#### General provisions.

**Sec. 2838. Existing corporations continued.** Until otherwise provided by law all private corporations existing and doing business at the time of the taking effect of the revised laws, shall continue to exercise and enjoy all powers and privileges possessed by them under their respective articles of incorporation and the laws applicable thereto then in force, and shall remain subject to all the duties and liabilities to which they were then subject.

**Sec. 2839. Terms defined.** The term "private corporation," as used in this chapter, shall include every company, association, or body endowed by law with any corporate power or function whatsoever, except such as are formed solely for public and governmental purposes, which shall be deemed public corporations. And, when not otherwise indicated by the context, the word "incorporation," whenever used in this chapter in reference to corporations formed prior to the taking effect of the revised laws, shall be construed as meaning articles of incorporation.

**Sec. 2840. Domestic and foreign corporations defined.** The term "domestic corporation" shall mean every corporation organized under the laws of this state, and the term "foreign corporation" shall mean every other corporation.

[Sec. 2841—2843. Relate to public service corporations.]

**Sec. 2844. Manufacturing and mining companies.** Corporations may be formed: 1. For carrying on any kind of manufacturing or mechanical business not incompatible with an honest purpose; 2. For the mining, smelting, reducing, refining, or working of ores or minerals, for working coal mines or stone quarries, or for buying, working, selling, or dealing in mineral lands, or for any one or more of the purposes mentioned in this paragraph.

**Sec. 2845. Mortgage loan and land companies.** Corporations may be formed for the purpose of loaning money, either for themselves or as agents for others, upon mortgages or other securities, and for the purchase and sale of lands, and of money obligations secured upon real or personal property, with power to execute all contracts, incumbrances, transfers, releases, and other documents necessary or convenient to the transaction of such business.

**Sec. 2846. Trading companies, etc.** Corporations may be formed for any of the following purposes: 1. Constructing, leasing, or operating docks, warehouses, elevators, public halls, or hotels; 2. Carrying on any kind of lumbering, agricultural, dairying, mercantile, chemical, transportation, or other lawful business not otherwise provided for in this chapter; 3. Buying, selling, and improving lands and tenements.

**Sec. 2847. Financial corporations.** Corporations may be formed for any one of the following purposes: 1. Carrying on the business of banking, by receiving deposits, buying, selling, and discounting notes, bills, and other evidences of debt, domestic or foreign, dealing in gold and silver bullion and foreign coins, issuing circulating notes, and loaning money upon real estate or personal security; 2. Establishing and conducting clearing houses, for effecting, in one place, the speedy and systematic daily exchange and adjustment of balances between banks and bankers in any municipality, town, or county, establishing and enforcing uniform methods of conducting the banking business in such locality, and adjusting disputes or misunderstandings between members of such clearing house engaged in the banking business; 3. Creating and conducting savings banks for the reception, on deposit, of money offered for that purpose, the investment thereof, and the declaring, crediting, and paying of dividends thereon as authorized and provided by law; 4. Transacting business as a trust company in conformity with the laws relating thereto; and 5. Carrying on, in accordance with law, the business of building, loan, and savings associations.

**Sec. 2848. Insurance corporations.** Corporations may be formed for carrying on any one branch of the business of insurance authorized by law, or any two or more branches thereof which are permitted by law to be transacted by one company.

**Sec. 2849. How organized. Certificate.** Any three or more persons may form a corporation for any of the purposes specified in this subdivision by complying with the conditions hereinafter prescribed. They shall subscribe and acknowledge a certificate specifying; 1. The name, the general nature of its business, and the principal place of transacting the same. Such name shall distinguish it from all other corporations, domestic or foreign, authorized to do business in this state, and shall end with "company," "corporation," "bank," or "association," or the word "incorporated;" 2. The period of its duration, if limited; 3. The names, and places of residence of the incorporators; 4. In what board its management shall be vested, the date of the annual meeting at which it shall be elected, and the names and addresses of those composing the board until the first election, a majority of whom, in the case of savings banks and building and loan associations, shall always be residents of the state; 5. The amount of capital stock, if any, how the same is to be paid in, the number or shares into which it is to be divided, and the par value of each share; and, if there is to be more than one class, a description and the terms of issue of each, and the method of voting thereon; 6. The highest amount of indebtedness or liability to which the corporation shall at any time be subject. It may also contain any other lawful provision defining and regulating the powers or business of the corporation, its officers, directors, trustees, members, and stockholders.

**Sec. 2850. Filing and record of certificates.** The certificate of every such corporation shall be filed for record with the secretary of state, who, if he finds that it conforms to law, and, if a financial corporation, has indorsed thereon the approval of the public examiner, or, if an insurance company, that of the insurance commissioner, and, in every case, that the required fee has been paid, shall record



the same and certify that fact thereon. After such record, such certificate shall be filed for record with the register of deeds of the county of the principal place of business as specified in the certificate.

**Sec. 2851. Publication of certificate.** Every such certificate of incorporation shall be published in a qualified newspaper in the county of such principal place of business, for two successive days in a daily, or for two successive weeks in a weekly, newspaper. Upon filing with the secretary of state proof of such publication, its corporate organization shall be complete.

**Sec. 2852. General powers.** Every corporation formed under the provisions of this chapter shall have power: 1. To have succession by its corporate name for the time stated in its certificate of incorporation; 2. To sue and be sued in any court; 3. To have and use a common seal and alter the same at pleasure; 4. To acquire, by purchase or otherwise, and to hold, enjoy, improve, lease, incumber, and convey all real and personal property necessary to the purposes of its organization, subject to the limitations hereafter declared; 5. To elect or appoint in such manner as it may determine, all necessary or proper officers, agents, boards, and committees, to fix their compensation, and define their powers and duties; 6. To make and amend, consistently with law, by-laws providing for the management of its property and the regulation and government of its affairs; 7. To wind up and liquidate its business in the manner provided by law.

**Sec. 2853. Additional powers.** In addition to the powers enumerated in section 2852, every such corporation, except the financial corporations hereinafter in this chapter specified, shall have power to issue more than one class of stock. And any corporation organized under sec. 2844 may take, acquire, and hold stock in any other corporation, if a majority of the stockholders shall elect.

**Sec. 2854. By-laws, how adopted.** The first board of directors, trustees, or managers shall adopt by-laws, which shall remain effective until and except as amended by the stockholders or members at any regular or special meeting called therefor.

**Sec. 2855. By-laws and statement to be filed and posted.** A copy of the by-laws of every corporation, whose articles are filed with the secretary of state, the names of its officers and a statement of the amount of the capital stock actually and in good faith subscribed for, if there be any, the amount and character of payments actually made thereon, and in the case of corporations empowered to take private property, the amount of its indebtedness in a general way, shall also be kept posted in its principal place of business; which statement shall be corrected as often as any material change takes place in relation to any part of the subject matter of such statement.

**Sec. 2856. Duration. Renewal.** A railroad corporation may be formed for any period specified in its certificate of incorporation. A savings bank shall have perpetual succession. Every other corporation shall be formed for a period not exceeding thirty years, in the first instance, but may be renewed from time to time for a further term not exceeding thirty years, whenever a three-fourths vote of the stock represented at any regular meeting, or at any special meeting called for that purpose, which shall have been clearly specified in the call, shall adopt a resolution to that effect, and those desiring it shall have purchased at its value the stock of those opposed thereto. [As amended by Laws 1907, Ch. 468, sec. 3.]

**Sec. 2857. When renewal takes effect.** No such resolution shall take effect until a duly certified copy thereof shall have been filed, recorded, and published in the same manner as its original certificate.

**Sec. 2858. Business, how managed.** The business of every such corporation, except savings banks, shall be managed by a board of at least three directors, elected by ballot by and from the stockholders or members; that of savings banks, by a board of at least seven trustees, residents of the county of its location, each of whom, before being authorized to act, shall file a written acceptance of the trust. A majority of the directors or trustees shall constitute a quorum for the transaction of business.

**Sec. 2859. Officers.** Every domestic corporation, except when otherwise specially provided, shall have a president, secretary and treasurer, and may have one or more vice presidents and other officers, as its certificate of incorporation or by-laws may provide. The time and manner of their election and their respective duties shall be prescribed in the certificate of incorporation or in the by-laws. The

president shall be a director or trustee. The secretary and treasurer may or may not be a director or trustee, as shall be provided in the certificate of incorporation, or in the by-laws.

That all corporations heretofore organized under the laws of this state, in which the matters in this section referred to are contained in the certificate of incorporation, are hereby legalized and in all things made valid. [As amended by Laws 1909, Ch. 298.]

**Sec. 2860. Classification of managers.** By so providing in its certificate of incorporation, any corporation may classify its directors or trustees in respect to the time for which they shall severally hold office, the several classes to be elected for different terms: Provided, that no class shall be elected for a term less than one, or more than five, years, and that the term of office of at least one class shall expire each year.

**Sec. 2861. Regulation as to voting.** Unless otherwise provided in the certificate or by-laws, at every meeting each stockholder or member, resident or non-resident, shall be entitled to one vote in person, or by proxy made within one year or other time specially limited by law, for each share or other lawful unit of representation held by him in his individual, corporate, or representative capacity, but no stock shall be voted on at any election within twenty days after its transfer on the books of the corporation.

**Sec. 2862. Cumulative voting.** The certificate of incorporation, original or amended, of any corporation now or hereafter organized under the laws of this state, and thereunder issuing or authorized to issue, shares of its capital stock, may provide that at all elections of directors or managers each stockholder or member shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors or managers to be elected, and that he may cast all of such votes for a single director or manager, or may distribute them among the number to be voted for, or for any two or more of them, as he may see fit, which right, when exercised, shall be termed "cumulative voting."

**Sec. 2863. Transfer of stock.** The delivery, by the rightful owner or by one by him intrusted therewith, to a bona fide purchaser or pledgee for value, of a certificate of stock, duly transferred in writing by the holder personally, or accompanied by his power of attorney authorizing such transfer, shall be sufficient to transfer title, but shall not affect the right of the corporation to pay any dividend thereon, or to treat the holder of record as the owner in fact, until such transfer has been recorded on its books, or a new certificate issued to the transferee, who, upon delivery of the former certificate to the treasurer, shall be entitled to receive such new one. Stock shall not be transferred upon the books of the corporation while any installment thereon remains delinquent, nor while any indebtedness of the record holder thereof to the corporation remains unpaid; nor shall any transfer deprive it of the right to maintain a personal action against any subscriber to its stock. A pledgee of stock transferred as collateral security shall be entitled to a new certificate, if the instrument of transfer substantially describe the debt or duty intended to be secured thereby. Such new certificate shall state on its face that it is held as collateral security, and the name of the pledgor, who alone shall be liable as a stockholder and entitled to vote thereon.

**Sec. 2864. Effect of transfer. Stock books.** The transfer of shares is not valid, except as between the parties thereto, until it is regularly entered on the books of the company, so far as to show the names of the persons, by and to whom transferred, the number or other designation of the shares, and the date of the transfer; but such transfer shall not in any way exempt the person making such transfer from any liabilities of said corporation which were created prior to such transfer. The books of the company shall be so kept as to show intelligibly the original stockholders, their respective interests, the amount which has been paid in on their shares, and all transfers thereof, and such books, or a correct copy thereof, so far as the items mentioned in this section are concerned, shall be subject to the inspection of any person desiring the same.

Liability for corporate debts may attach to an unrecorded transferee, where he has been recognized by the corporation and has acted as a stockholder.

**Sec. 2865. Liability of Stockholders.** Every stockholder shall be personally liable for corporate debts in the following cases: 1. For all unpaid instalments on stock owned by him or transferred for the purpose of defrauding creditors; 2. For

failure by the corporation to comply substantially with the provisions as to organization and publicity. 3; For personally violating any of such provisions in the transaction of any corporate business as officer, director, or member, and for fraudulent or dishonest conduct in the discharge of any official duty.

**Sec. 2866. Property of stockholders levied on, when.** The private property of a stockholder shall not be levied on for any liability specified in sec. 2865, unless both he and the corporation are duly served with process in the action, and the issue involving his individual liability is raised and determined therein; and individual property shall never be levied on until all corporate property which can be found has been exhausted.

**Sec. 2867. Proceedings of officer levying.** The officer holding an execution which may be so levied on private property shall first demand payment of the president, secretary, or other acting officer of the corporation, or who was one of its last acting officers; and, if he fails to forthwith satisfy the execution or point out corporate property upon which it may be levied, the officer shall indorse thereon the fact of such demand and failure to pay, and then levy the same upon individual property of any stockholder impleaded and served as aforesaid. Such levy may be made to satisfy any balance due upon an execution, after levy upon corporate property, or part payment from corporate funds.

**Sec. 2868. Capital stock.** Except as otherwise provided in this chapter, the capital of any stock corporation shall in no case be less than ten thousand dollars. It shall be divided into shares of not less than one dollar nor more than one hundred dollars each, but the capital and number of shares may be increased at any regular or specially called meeting of the stockholders.

**Sec. 2869. Record of stock. Reports. Dividends.** In all stock corporations the directors shall cause accurate and complete records to be kept of all corporate proceedings and of all stock subscribed, transferred, cancelled, or retired, and proper books, accounts, files, and records of all other business transacted. All such books and records shall at all reasonable times and for all proper purposes be open to the inspection of every stockholder. Its directors shall, when required, present to the stockholders written reports of its condition and business, and declare such dividends of the profits of the business as they deem advisable, but shall not thereby reduce the capital while there are outstanding liabilities.

**Sec. 2870. Offices without and within the state.** Every domestic corporation may establish offices and conduct business in any other state or country; Provided, that an office in charge of some person upon whom legal process affecting it may be served is always maintained in this state.

**Sec. 2871. Amendment of certificate.** Every certificate of incorporation may be amended in respect to amount of stock or any other matter which an original certificate of a corporation of the same kind might lawfully have contained, by the adoption of a resolution specifying the proposed amendment, at a regular meeting or at a special meeting called for that expressly stated purpose, in either of the following ways: 1. by majority vote of all its shares, if a stock corporation; or if not; 2. by majority vote of its members; or, in either case; 3. by majority vote of its entire board of directors, trustees, or other managers, within one year after having been thereto duly authorized by specific resolution duly adopted at such a meeting of stockholders or members, and by causing such resolution to be embraced in a certificate duly executed by its president and secretary, or other presiding and recording officers, under its corporate seal, and approved, filed, recorded, and published in the manner prescribed for the execution, approval, filing, recording, and publishing of a like original certificate.

[Sec. 2872. Pertaining to increase of railway stock, omitted.]

**Sec. 2873. Fees.** Before filing any certificate of incorporation, renewal, or amendment increasing the capital stock, there shall be paid to the state treasurer a fee of fifty dollars for the first fifty thousand dollars, or any fraction thereof, of the capital stock of an original or renewed corporation, and five dollars for each additional ten thousand dollars or fraction thereof.

But nothing in this section shall apply to a corporation formed and operated solely for raising or improving live stock, or for the cultivation or improving of farms, gardens, or agricultural lands, growing beets or for canning fruits or vegetables, or to any telephone company connecting towns or villages of less than two thousand inhabitants, or to local building and loan associations, and nothing in this section

shall apply to corporations organized for the purpose of conducting a Chautauqua system of education, or to purely social corporations organized for maintaining curling clubs or associations, but the capital stock of any such last named corporation shall not exceed \$ 5 000.00. (As amended by Laws 1907, ch. 329, and Laws 1909, ch. 202.)

**Sec. 2874. State certificate of incorporation.** Whenever any such corporation, whose incorporation has been completed, shall make application therefor to the secretary of state and pay the prescribed fee, said secretary shall execute, record, and issue a certificate, specifying the names of its incorporators, its nature and purpose, the amount of its capital stock, the fact of its compliance with all prescribed statutory provisions, and that it is duly organized and exists as a corporation under the name and of the kind specified, with the powers, rights, and privileges, and subject to the limitations and restrictions pertaining thereto. Such certificate shall be prima facie evidence of the facts stated therein.

**Sec. 2875. First and subsequent meetings, how called.** The first meeting of every corporation, except as otherwise prescribed in its certificate of incorporation, shall be called upon not less than three weeks' prior personal or published notice, signed by one of the incorporators, to the others, and to each subscriber, if any, to its capital stock, specifying the time, place, and purpose thereof. Unless otherwise provided in the certificate of incorporation or corporate by-laws, every annual meeting shall be called and held at its principal place of business upon three weeks' published notice thereof signed by its secretary, and no business transacted at any annual meeting not so called and held shall be effectual. The manner of calling and holding all meetings may be prescribed by its by-laws.

**Sec. 2876. Meeting called by members.** Whenever, by reason of the death, absence, or other legal disability of the officers of any corporation, there is no person authorized to call or preside at a legal meeting thereof, any three or more of its stockholders or members may call a meeting by giving to all the others the notice prescribed in Sec. 2875, and designating therein some person to preside at such meeting until a chairman and clerk are chosen, who shall act during the absence of those authorized to act in one or both of those capacities respectively. Any business may be done at such meeting which could be lawfully transacted at a regular meeting.

**Sec. 2877. Irregular meetings, how validated.** Whenever all the stockholders or members of a corporation are present or duly represented at any meeting, however called or notified, and duly execute a written assent thereto on the records thereof, the business transacted at such meeting shall be as valid as if it had been legally called.

**Sec. 2878. Capital stock. How classified and issued.** Save as otherwise specially limited or provided, no corporation shall issue any share of stock for a less amount to be actually paid in than the par value of those first issued. But any railroad or exclusively manufacturing corporation may issue and dispose of such an amount of special, preferred, or full-paid stock as may be deemed advisable by its board of directors. Any corporation whose original or amended certificate of incorporation so provides may issue and dispose of special and preferred and common stock, or special or preferred and common stock; and any corporation, without change of its certificate of incorporation, when its board of directors are so authorized by a majority vote of its stockholders at its annual meeting, or at a meeting called for that specifically stated purpose, may issue its capital stock, part special, part preferred, and part common, or part common and part either special or preferred, and give such preference as it deems best to such special or preferred stock, or to such special and preferred stock.

**Sec. 2879. Stock certificates, to whom issued.** Upon payment in full of all amounts due any corporation from any person upon any certificate for its stock, and the surrender of all receipts, if any, issued therefor, he shall be furnished with a certificate, under the corporate seal, stating the number of shares and class of its stock owned by him, signed by its president or vicepresident, and by its secretary, under its corporate seal. Said certificate shall be prima facie evidence of such ownership.

**Sec. 2880. New certificate.** Every corporation, on the surrender of a worn-out or defaced certificate, shall issue a new one therefor, without indemnity. Whenever an affidavit stating the loss or destruction of any certificate of its stock shall be

presented to the directors of any corporation, they shall cause a new one to be issued to the owner thereof, but may, in their discretion, first require a satisfactory bond for not more than double the market value of the stock, to indemnify the corporation against any claim arising from the issue of such new certificate. On giving such bond the corporation shall issue such new certificate. If the evidence is clear that said certificate has been lost or destroyed, and has not been heard of for seven years, it shall be the duty of said corporation to issue a new certificate without indemnity, and the secretary or other proper officer shall make report thereof in his register of shareholders, and said corporation shall be released from all damages in reference thereto.

**Sec. 2881. Executors, etc., may vote. Not personally liable.** Every executor, administrator, guardian, or trustee shall represent the shares of stock in his hands for all purposes, at all meetings of the corporation, but while acting in good faith shall not be personally liable; but the estates and funds in his hands shall be liable in like manner and to the same extent as the beneficiary or other represented party or interest would be if competent to act and holding the stock in their own names, respectively.

**Sec. 2882. Dissolution of corporations.** Whenever any corporation except a bank of discount and deposit or a savings bank has determined, upon the affirmative vote of a majority of each class of its stock entitled to vote, or of its members if without capital stock, that it is for the interest of all persons concerned therein that it be dissolved, it may cause appropriate action to be taken to effect such dissolution.

**Sec. 2883. Continuance for three years to close affairs.** Every corporation whose existence terminates by limitation, forfeiture, or otherwise, shall nevertheless continue for three years thereafter, for the purpose of prosecuting and defending actions, closing its affairs, disposing of its property, and dividing its capital, but for no other purpose.

**Sec. 2884. Diversion of corporate property.** The diversion of corporate property to other objects than those specified in the recorded and published certificate, where injury to any individual results therefrom, the declaring of dividends when the profits are insufficient to pay the same or when the funds remaining will not meet the corporate liabilities, or any intentional deception of the public or individuals in relation to its means or liabilities, are felonies, and every person guilty of any one of them shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the state prison for not more than three years, or by both.

**Sec. 2885. False statements.** Every officer, agent, or employee of any corporation who shall knowingly and wilfully subscribe or make any false statement, false report, or false entry in or upon any of the books, papers, or other documents thereof, or in behalf thereof, or shall knowingly and wilfully subscribe or exhibit any false paper, book, or document with intent to deceive any person or officer authorized to examine the financial condition of any such corporation, or shall knowingly and wilfully subscribe or make any false report whatsoever shall be guilty of a felony and be punished by imprisonment in the state prison not less than one or more than ten years.

**Sec. 2886. Existing corporation, how to reorganize.** Any existing corporation whose certificate or charter does not conform to the requirements of this chapter may cause to be executed by its president and secretary a new or amended certificate in compliance herewith, and, upon proceeding in all respects as is prescribed in the case of an original certificate of a corporation of the same kind, shall become entitled to all rights, benefits, and privileges conferred, and subject to all the requirements imposed, upon like corporations by the provisions of this subdivision, save that its rights in respect to property acquired or investments made prior to the taking effect of these revised laws shall be determined and governed by the laws in force at the date of such acquisition and investments, respectively.

**Sec. 2887. Examination by attorney general, etc.** Whenever required by the governor, the attorney general shall examine into the affairs and condition of any corporation, and report such examination in writing, together with a detailed statement of facts found, to the governor, who shall lay the same before the legislature, and the legislature, or either branch thereof, may also examine into the affairs and condition of any such corporation. The attorney general, or either branch of the legislature through a committee appointed by it for that purpose, may ad-

minister oaths to and examine the directors and officers of any corporation on oath in relation to its affairs and condition, may examine the vaults, books, papers, and documents belonging thereto or pertaining to its affairs and conditions, and compel the production of all keys, books, papers, and documents.

### Foreign corporations.

**Sec. 2888. Office and agent in state.** Every foreign corporation for pecuniary profit, before it shall be authorized or permitted to transact any business in this state, or to continue business herein if already established, or to acquire, hold, or dispose of property within this state, or to sue or maintain any action at law or otherwise in any of the courts in this state, shall have and maintain a public office or place in this state for the transaction of its business, and shall appoint an agent, who shall reside in the county in which said public office is located, duly authorized to accept service of process, and upon whom service of process may be had in any action to which said corporation may be a party; and service upon such agent shall be due and personal service upon such corporation. An authenticated copy of the appointment of such agent shall be filed with the secretary of state, and a certified copy thereof shall be prima facie evidence of the appointment and authority of such agent.

**Sec. 2889. Filing articles. License fees.** Every such foreign corporation, now or hereafter doing business within this state, shall file with the secretary of state a copy of its charter or certificate or articles of incorporation, duly authenticated by the proper authority; and the principal or agent in this state of the said corporation shall make and file with the secretary of state with the articles or certificate aforesaid, a statement duly sworn to showing the proportion of the capital stock of said corporation which is represented by its property located and business transacted in this state; and such corporation shall pay into the state treasury fifty dollars for the first fifty thousand dollars or fraction thereof of such proportion of capital stock, and the further sum of five dollars for every additional ten thousand dollars or fraction thereof of such proportion of capital stock; and no increase of the capital stock of any such corporation shall be valid or effectual until the corporation shall have paid into the state treasury five dollars for every ten thousand dollars or fraction thereof of such increase of said proportion of capital stock of such corporation. In determining the proportionate share of the capital stock upon which license fees shall be paid as aforesaid, the business of said corporation transacted in and out of this state during the year immediately preceding the filing of its articles or certificate as above provided for shall be considered and shall control. Upon compliance with the above provision by the corporation, the secretary of state shall issue to it a certificate that said corporation has complied with the laws of this state and is authorized to do business herein, stating the amount of its capital and of the proportion thereof which is represented in this state, which certificate shall be prima facie evidence that said corporation is entitled to all the rights and benefits hereof and of the valid creation and organization of such corporation; and such corporation shall enjoy those rights and benefits for the period of thirty years from and after the date of such certificate, unless its corporate existence shall sooner cease; and the right and privilege of such corporation to so transact business and acquire and hold property in this state may be renewed for like periods by refiling its articles of incorporation with the secretary of state and by the payment of like fees whenever, pursuant to the provisions hereof, its said rights and privileges shall have expired.

**Sec. 2890. Penalties. Exceptions.** Every such foreign corporation for pecuniary profit, now doing business in or which may hereafter do business in this state which shall neglect or fail to comply with the foregoing conditions shall be subject to a fine of one thousand dollars to be recovered before any court of competent jurisdiction; and the secretary of state, as often as he may be advised that corporations are doing business in contravention hereof shall report such fact to the county attorney of the county in which the business of such corporation is located, and such attorney, as soon thereafter as practicable, shall institute proceedings to recover the fine aforesaid, which fine shall be paid into the treasury; and no corporation which shall fail to comply with the foregoing provisions shall maintain any suit or action, either legal or equitable, in any of the courts of this state, upon any demand, whether arising out of contract or tort. Provided, that nothing herein shall

be construed as releasing any such corporation from complying with any provision of the existing laws of this state; and provided, further, that these provisions shall not apply to corporations engaged in an exclusively manufacturing business in this state; nor to drummers or traveling salesmen soliciting business in this state for corporations which are entirely non-resident; nor to any corporation engaged only in the business of loaning money or investing in securities in this state, including all business incidentally growing out of the same and the handling of such real estate and other property as may be taken by foreclosure or otherwise in liquidation of such loans or securities; provided, further, that none of the provisions hereof shall apply to or in any manner affect corporations organized for the purpose of raising and improving live stock, cultivating and improving farms or gardens or horticultural lands, or for growing sugar beets, or any corporation formed for the purpose of canning fruits or vegetables. And, provided, further, that these requirements shall not apply to any foreign corporation heretofore licensed or authorized to transact business in this state and which has paid to the state treasurer the fees on capital stock required of domestic corporations under Laws, 1889, c. 225, or to any corporation whose sole business in this state is the transportation of freight or passengers, or both, by water.

See also laws, 1907, c. 427, legalizing certain acts done by foreign corporations, and exempting them from penalties under this section.

### **Other corporations for profit.**

#### **Manufacturing corporations.**

**Sec. 3068. Formation. Purpose.** A corporation may be formed for the purpose of engaging in any manufacturing or mechanical business not inconsistent with an honest purpose. The amount of its capital stock shall be fixed and limited by the stockholders in their certificate of incorporation, and shall be divided into shares of not less than ten dollars nor more than one hundred dollars each, but may be increased at any stockholders' meeting called for that purpose.

**Sec. 3069. Withdrawal of capital. Liability of stockholders.** If the capital stock of a manufacturing corporation is withdrawn and refunded to the stockholders before the payment of corporate debts for which it would have been liable, the stockholders shall be liable to any creditor, to the amount of the sum so refunded to each of them, respectively; but if, in any action under this statute, any stockholder shall be compelled to pay any such debt, he may call upon every stockholder to whom any part of such stock has been refunded to contribute his proportionate share of the sum so paid by him. If the directors shall pay a dividend when such corporation is insolvent, knowing such corporation to be insolvent, or that such dividend would render it so, or when its payment would render it insolvent, those assenting thereto shall be jointly and severally liable in an action on the statute for all debts due from such corporation at the time of such dividend. Every officer who shall intentionally neglect or refuse to perform any duty imposed upon him by law shall be liable for all corporate debts contracted during the period of such neglect, and if the corporation shall violate any provision of law, whereby it becomes insolvent, the directors ordering or assenting to such violation shall be liable in an action under the statute for all debts contracted after such violation.

#### **Co-operative associations.**

**Sec. 3073. Formation. Purposes.** A co-operative association may be formed for the purpose of engaging in any lawful mercantile, manufacturing, or agricultural business. Its certificate of incorporation shall be filed for record with the register of deeds of the county of its principal place of business, and thereupon it shall become a corporation. A majority of the incorporators shall be residents of the county of its principal place of business, and its duration without renewal shall not exceed twenty years.

**Sec. 3074. Officers. Management.** Every such association shall have a president, a treasurer, and not less than three directors, who shall together constitute a board of managers and conduct its business. Such officers shall be chosen annually by the stockholders, and hold their offices until others have been chosen and qualified. The association shall make its own by-laws, not inconsistent with law, and may therein provide for any other officers deemed necessary, and the mode of their

selection. It may amend its certificate of incorporation at any general stockholders' meeting, or at any special meeting called for that purpose, upon ten days' notice to the stockholders.

**Sec. 3075. Capital. Limit of interest. Shares.** The amount of capital stock shall be fixed by the certificate of incorporation, which amount and the number of shares may be increased or diminished at a stockholders' meeting specially called for that purpose; but the whole amount of stock shall never exceed one hundred thousand dollars, and, in case of a creamery association, shall not exceed twenty-five thousand dollars. Within thirty days after the adoption of an amendment increasing or diminishing its capital, it shall cause the vote so adopting it to be recorded in the office of the register of deeds where its original certificate is on record. No share shall be issued for less than its par value, and no members shall own shares of greater par value than one thousand dollars, or be entitled to more than one vote. It may commence business whenever twenty per cent of the stock has been subscribed for and paid in, but no certificate of shares shall be issued to any person until the full amount thereof has been paid in cash, and no person shall become a shareholder therein except by consent of the managers.

**Sec. 3076. Liability of officers. Dissolution.** If such board of managers, or the directors, or officers having control of such association, for five consecutive years after its organization shall fail to declare a dividend upon its capital or shares, five or more stockholders, by petition setting forth such facts, may apply to the district court of the county of its principal place of business, for its dissolution. If, upon hearing, the allegations of the petition are found to be true, the court may adjudge a dissolution of the association.

**Sec. 3077. Distribution of profits.** The profits on the earnings of such association shall be distributed to those entitled thereto by its by-laws, and in the proportions and at the times therein prescribed, which shall be as often as once in twelve months.

**Sec. 3078. Annual report to dairy and food commissioner.** Every creamery association, on or before December 30 in each year, shall make a report to the state dairy and food commissioner, or such officer as may at any time, by law, be given the supervision of dairy products. Such report shall contain the name of the corporation, its principal place of business, the location of its creamery, and the number of pounds of butter or other dairy product manufactured by it during the preceding year.

### **Actions respecting corporations.**

**Sec. 3169. Mode of prosecution.** Foreign corporations may prosecute in the courts of this state in the same manner as domestic corporations, and neither shall maintain an action upon an obligation or liability arising out of, or in consideration of, an act which is contrary to law or public policy or forbidden to the other. Except as otherwise expressly provided by law, actions against them shall be commenced by summons, and proceed in the same manner as civil actions against natural persons.

**Sec. 3170. Mandatory and restraining orders.** Upon complaint filed under the direction of the attorney general in any district court, such court may restrain by injunction any corporation from assuming or exercising any franchise, liberty, or privilege, or transacting any business not authorized by its act of incorporation, and may restrain any individual from exercising any corporate rights, privileges, or franchises not granted them by law. Such injunction may be issued before answer upon satisfactory proof that the defendant has usurped, exercised, or claimed any franchise, privilege, liberty, or corporate right not granted to it.

**Sec. 3171. Power of court over corporation officers.** In any case affecting a corporation the district court may: 1. Require any officer thereof to account for his official conduct in the management and disposition of any funds or property of the corporation at any time in his charge or possession; 2. Compel any such officer to pay to such corporation or to its representatives all funds, and the value of all property acquired and held, or transferred to others, or lost, wasted, or damaged, in violation of official duty; 3. Suspend any such officer whenever it appears that he has violated his trust; 4. Remove any such officer upon conviction or satisfactory proof of gross misconduct; 5. Cause an election to be held to fill any vacancy created by such removal, when deemed necessary, in which case it shall appoint a disin-



interested person to conduct the same under its direction, and, in case of suspension or removal of a majority of the managing board, it may appoint a temporary receiver to act until such suspension shall terminate in the one case, and in the other until the vacancies shall have been filled by new officers duly elected and qualified; 6. Set aside any unauthorized or unlawful alienation of property made by any officer thereof whenever satisfied that the alienee knew or had reasonable cause to believe that such conveyance was unauthorized or illegal; 7. Restrain and prevent any such alienation, threatened or intended; 8. Cause a meeting of its managing board, stockholders, or members to be held when deemed necessary for the preservation of its property or protection of its interests; Provided, that nothing in this section contained shall be construed to impair any visitatorial power or authority over any corporation vested by law in any corporate body or public officer.

**Sec. 3172. Appeal, effect of.** An appeal from an order or judgment removing an officer or trustee, under sec. 3171, shall not operate to stay its effect or any proceeding under it; but the term of office of any officer, director, or trustee elected thereunder to fill a vacancy, or of any receiver appointed, shall be terminated by a reversal or vacation of such order or judgment.

**Sec. 3173. Sequestration. Order of distribution.** Upon complaint of a person obtaining judgment against a corporation or his representatives, made after the return unsatisfied of an execution issued thereon, the court may sequester the stock, property, things in action, and effects of such corporation, and appoint a receiver of the same, and upon final judgment upon any such complaint the court shall order the property remaining, or the proceeds thereof, to be disposed of under its direction, proportionately in the following order: 1. In payment of the costs and expenses of the receivership; 2. Debts due the United States and the state of Minnesota, if any; 3. Taxes and assessments, if any; 4. Claims duly proved and allowed of clerks, servants, or laborers, for services performed within three months preceding the appointment of the receiver, if any; 5. Other claims duly proved and allowed.

After payment of the expenses of receivership and claims of creditors duly proved, the remainder, if any there be, shall be distributed pro rata among the stockholders proving themselves entitled thereto.

**Sec. 3174. Forfeiture of rights. Dissolution.** Whenever any railway company doing business in this state shall charge, demand, or receive unreasonable rates for the transportation of freight or passengers, or when any corporation remains insolvent, neglects or refuses to discharge its notes or other evidences of debt, or suspends its lawful business for one year, or fails to dispose of all its property, with or without payment of all its debts, within the time allowed by law for the liquidation of its affairs, or whenever any corporation shall violate any provision of its articles or certificate of incorporation or any law obligatory upon it, such corporation shall forfeit all its rights, privileges, and franchises, and be adjudged to be dissolved. The attorney general shall make complaint against any corporation which shall in any manner violate any provision of this section or commit any act herein recited, and if upon trial it is found to have committed any such acts the court shall render judgment of forfeiture and dissolution of the corporation. Upon the trial of any action against a railway company for charging, demanding, or receiving unreasonable rates for transportation of freight or passengers the court or jury shall find specially as to the truth of such allegations.

**Sec. 3175. Dissolution on petition of corporation.** A majority in number or interest of the members of a corporation, desiring to close their concerns and dissolve the corporation, may present a petition to the district court in the county of its principal place of business, setting forth the name of the corporation; when and by or under what law it was incorporated; the names and addresses of the bondholders, stockholders, or members, the amount of the authorized capital stock, and the amount of capital stock actually paid in; and if not then transacting business when it ceased so to do; the amount of its indebtedness; the amount and character of its personal property; and the amount and description of its real estate. It shall also state the grounds upon which dissolution is sought and the interest of the petitioner and pray for proper relief; provided, however, that when any corporation now or hereafter organized under any law of this state having capital stock actually paid in exceeding the sum of forty thousand dollars (\$40,000) and has heretofore or shall hereafter continue in the business for which it was in-

incorporated for more than three years and in the carrying out of such business, has sustained losses whereby the capital stock so paid in has become impaired so as to be worth at least twenty-five per cent. (25 per cent.) less than its par value, then and in any such case, the district court shall have power and is hereby given power to dissolve any such corporation upon petition of stockholders owning not less than forty per cent. (40 per cent.) of such capital stock so paid in, provided that such stockholders so petitioning shall have paid the full value of their stock. [As amended by Laws, 1909, c. 276.]

**Sec. 3176. Hearing. Notice.** Upon the presentation of such petition, the court shall fix a time and place for hearing thereon, and order three weeks' published notice thereof to be given, and such other notice to parties interested as it may deem proper. At the time and place so fixed the court shall hear the allegations and evidence of all parties interested and if any of the grounds specified in the petition is sustained, shall adjudge the corporation dissolved, and appoint a receiver to close its affairs.

**Sec. 3177. State interested, proceedings.** Whenever, in any action or proceeding to dissolve a corporation, it shall appear at any stage of the proceedings that the state is or is likely to be interested therein, or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general, in the manner of serving a summons in a civil action; and the attorney general shall intervene in any such proceeding when in his opinion the public interest requires it, whether so notified or not.

**Sec. 3178. Appointment of receiver. Duties.** In any action or proceeding to dissolve a corporation, the court at any time before judgment, or within three years after judgment of dissolution, may appoint a receiver to take charge of its estate and effects, and to collect the debts and property due and belonging to it, with power to prosecute and defend actions in its name or otherwise, to appoint agents under him, and do all other acts necessary to the final settlement of the unfinished business of the corporation which it might do if in being. The power of such receiver shall continue so long as the court deems necessary for said purposes. Such receiver shall pay all debts due from the corporation, if the funds in his hands are sufficient therefor, and, if not, shall distribute the same ratably among the creditors who prove their debts, in the manner, directed by the court; and, if there be any balance after the payment of the debts, he shall distribute and pay the same to and among those who are justly entitled thereto, as having been stockholders or members. Every receiver appointed under the provisions of this chapter shall give bond in such amount as the court shall require, with sureties approved by it.

**Sec. 3179. Insolvent banks and insurance companies.** Whenever any insurance company or any corporation having banking powers, or the power to make loans on pledges or deposits, becomes insolvent or unable to pay its debts, or neglects or refuses to pay its notes or evidences of debt on demand, or violates any provision of the act under which it was incorporated or of any other law obligatory upon it, the court may by injunction restrain it and its officers from exercising any of its corporate rights, privileges, and franchises, and from collecting or receiving any debts or demands, and from paying out or in any way transferring or delivering to any person any of its moneys, property, or effects, until otherwise ordered by the court.

**Sec. 3180. Forfeiture of charter. Receiver. Suit by creditor.** Such injunction may be issued on the complaint of the attorney general in behalf of the state, or of any creditor or stockholder of the corporation. Whenever it issues against a bank for any violation of its charter, on complaint of a creditor, the court shall proceed to final judgment, and if the proof be sufficient adjudge a forfeiture, notwithstanding such creditor may settle with the corporation and relinquish his claim against it. In such cases the attorney general or a creditor may appear and prosecute the action, which shall not be discontinued if either of them so appears and prosecutes the same. At any stage of the proceedings the court may appoint one or more receivers to take charge of the property and effects of such corporation. If such injunction be upon application of a creditor of a corporation whose directors or stockholders are liable by law for the payment of such debts in any event or contingency, such directors or stockholders or any of them may be made parties to the action, either at the time of filing the complaint or at any subsequent time when it becomes necessary to enforce such liability.

**Sec. 3181. Unpaid stock subscription, etc.** Whenever the property of any corporation is insufficient to pay its debts, upon application of a creditor the court shall order the payment by each stockholder of the amount, if any, unpaid on the shares held by him, or such portion thereof as may be necessary to satisfy the corporate debts, and when necessary may direct the receiver to enforce such order by appropriate proceedings; and on application of a stockholder the court may make such order as will equalize the payments made by stockholders for their stock, and in like manner the court may enforce any liability of directors and officers.

**Sec. 3182. Order limiting time to present claims. Extension.** The court, upon adjudication of dissolution, shall therein limit the time in which creditors may present claims against the corporation, which shall not be less than six months nor more than one year from its date, and fix the time and place when and where it will examine and adjust the same. No claim or demand shall be received or allowed after the expiration of the time so limited, except by permission of the court for good cause shown, and upon notice to the receiver, but in no case unless presented within eighteen months from the date of adjudication and before final settlement.

**Sec. 3183. Notice of hearing.** Three weeks' published notice of such order of hearing shall be given, which shall require all creditors to present their claims, duly verified, within the time limited, or be precluded from participation in any distribution of corporate property thereafter made.

**Sec. 3184. Enforcement of stockholders' liability.** Whenever it shall be made to appear by the petition of a receiver or assignee of a corporation, or of any creditor thereof whose claim has been filed, that any constitutional, statutory, or other liability of stockholders or directors or both exists, and that it is necessary to resort to the same, the court shall appoint a time for hearing, not less than thirty nor more than sixty days thereafter, and order such notice thereof as it deems proper by publication or otherwise, to be given. When the receiver is not the petitioner, personal notice shall be given to him.

**Sec. 3185. Hearing upon petition.** Upon such hearing, after proof of due service of notice, the court shall receive and consider such evidence by affidavit or otherwise as may be presented by the receiver, or by any creditor, officer, or stockholder, appearing in person or by attorney, upon the following points: 1. The nature and probable extent of the indebtedness of the corporation; 2. The probable expense of the receivership; 3. The probable amount of available assets; 4. The parties liable as stockholders, the nature and extent of the liability of each, and their probable solvency or responsibility.

If it appears that the available assets, or such amount as may be realized therefrom within a reasonable time, will be insufficient to pay such expenses and indebtedness in full and without delay, the court shall order, a ratable assessment upon all parties liable as stockholders, or upon account of any stock of such corporation, for such amount, proportion, or percentage of such liability upon or on account of each share of such stock as it shall deem proper, considering the probable solvency and responsibility of the stockholders and the probable expense of collecting such assessment, and shall direct payment of the amount so assessed against each share of such stock to the assignee or receiver, within the time specified in such order.

**Sec. 3186. Contents of order. Conclusiveness.** Such order shall authorize and direct the assignee or receiver to collect the amount so assessed, and, on failure of any one liable to such assessment to pay the same within the time prescribed to prosecute an action against him, whether resident or non-resident, and wherever found. Such order shall be conclusive as to all matters relating to the amount, propriety, and necessity of the assessment, against all parties therein adjudged liable upon, or on account of, any stock or shares of such corporation, whether appearing or being represented at the hearing or not, or having notice thereof or not.

**Sec. 3187. Actions for assessments, how and where prosecuted.** Upon expiration of the time specified in the order for the payment of assessments, the assignee or receiver shall commence action against every party so assessed and failing to pay, wherever he or any property subject to process in such action is found, unless he shall report to the court that he believes such stockholders to be insolvent, or that the expenses of the prosecution will probably exceed the amount likely

to be collected, in which case the court, unless satisfied to the contrary, shall order action suspended as to such party.

**Sec. 3188. Additional assessments, how levied. Joinder of causes.** Whenever, at any time after an assessment for an amount less than the maximum stockholders' liability has been levied, it shall appear, by petition or otherwise, and after hearing as hereinbefore provided, that by reason of the insolvency of stockholders, or for any other cause, it is necessary, or for the interest of creditors, that a further assessment be levied, the court shall order the same for such amount, proportion or percentage as it may deem proper; and in the same manner, and with like effect, at any time thereafter may levy additional assessments, not exceeding in the aggregate the maximum stockholders' liability. Whenever two or more assessments shall have been levied, the assignee or receiver may recover therefor in a single action, or, unless otherwise directed may maintain a separate action against each stockholder for each successive assessment.

**Sec. 3189. Proceedings on failure of assignee or receiver to prosecute.** If the assignee or receiver shall neglect to begin an action against any stockholder who has failed to pay his assessment, and is not excepted from the present operation of such order, or to diligently prosecute the same, any stockholder who has paid his assessment in full, or any creditor, may petition the court to order such assignee or receiver to prosecute such action against such delinquent stockholder, or to permit such petitioner to begin and maintain or to continue any such action already begun, in the name of such assignee or receiver, for the benefit of such estate; and if the petitioner shall furnish such security for costs and expenses as the court may direct, it shall either require the assignee or receiver to prosecute such action forthwith, or permit the petitioner to begin and prosecute, or continue the prosecution of the same.

**Sec. 3190. Surplus to be divided among stockholders.** Whenever, after the payment of all expenses of such assignment or receivership, and all indebtedness of and claims allowed against such corporation, any surplus money or property remains in the hands of the assignee or receiver, the same shall be equitably distributed, under the direction of the court, among the stockholders who have paid their assessments. Any stockholder who has paid his assessments, in addition to any remedy herein provided, shall be entitled to enforce contribution from any stockholder who has not paid such assessments, and for that purpose shall be subrogated to the rights of the creditors or assignee or receiver of such corporation against every such delinquent stockholder, in such manner and to such extent as may be just and equitable.

---

## **Laws, 1907, c. 293. An act to provide for the Incorporation of Co-operative Associations, formed for the Purpose of Selling, or otherwise Disposing of Products of any Co-operative Manufacturing or Agricultural Association, heretofore or hereafter organized under the Provisions of this Act.**

**Sec. 1. Formation of co-operative associations.** Any co-operative association may be formed for the purpose of selling and otherwise disposing of any product of any manufacturing or agricultural co-operative association organized under the laws of this state. Its certificates of incorporation shall be filed for record with the secretary of state, and thereupon it shall become a corporation. A majority of the incorporators thereof shall be residents of this state, and its duration, without renewal, shall not exceed twenty (20) years.

**Sec. 2. Officers. Powers. Capital stock.** Every such association shall have a president, a treasurer, and not less than three directors, who shall together constitute a board of managers and conduct its business. Such officers shall be chosen annually by the stockholders, and shall hold their offices until others shall be chosen and qualified. The association shall make its own by-laws, not inconsistent with the law, and may therein provide for any other officers deemed necessary, and the mode of their selection. It may amend its articles of incorporation at any general stockholders' meeting, or at any special meeting called for that purpose, upon ten days' notice to the stockholders. The amount of capital stock shall be fixed by

the articles of incorporation, which amount and the number of shares may be increased or diminished at a stockholders' meeting, specially called for that purpose, but the whole amount of stock shall never exceed \$100,000. Within thirty days after the adoption of the amendment increasing or diminishing its capital stock, it shall cause the vote so adopting it to be recorded in the office of the secretary of state. No share shall be issued for less than its par value, and no member shall own shares of a greater par value than \$1000, or be entitled to more than one vote. It may commence business whenever 20 per cent. of the authorized stock has been subscribed for and paid in, but no certificate of shares shall be issued to any person until the full amount of such subscription therein has been paid in cash, and no person shall become a shareholder therein except by the consent of the managers. If such board of managers, or the directors or officers having control of such association, for five consecutive years after its organization shall fail to declare a dividend upon its capital or shares, five or more stockholders, by petition, setting forth such fact, may apply to the district court of the county, wherein is situated its principal place of business in this state, for its dissolution. If, upon hearing, the allegations of the petition are found to be true, the court may adjudge a dissolution of the association. The profits on the earnings of such association shall be distributed to those entitled thereto by its by-laws and in proportions and at the times therein prescribed, which shall be as often as once in twelve months. Every corporation organized under the terms of this act shall, on or before December 30, in each year, make a report to the state dairy and food commissioner; such report shall contain the name of the corporation, its principal place of business in this state, and generally a statement as to its business, showing total amount of business transacted, its profits and losses.

**Sec. 3. Application to existing associations.** Any corporation heretofore or hereafter organized under the provisions of section 3073, revised laws of 1905, or chapters 276 or 313, general laws, 1905, is hereby authorized, in addition to those other powers to it granted, upon an affirmative vote of a majority of its directors or other governing body, had at any regular meeting or any special meeting called for that purpose, to subscribe to the capital stock of any corporation organized under the provisions of this act, pay for the same and thereafter, in like manner, vote the same and exercise all the usual powers of a stockholder in a corporation, subject to the limitations herein set forth.

---

## New Jersey.

### Laws, 1896, c. 185. An Act concerning Corporations (Revision of 1896).

---

#### I. Powers.

**Sec. 1. Powers of corporations in general.** Every corporation shall have power: I. To have succession, by its corporate name, for the period limited in its charter or certificate of incorporation, and when no period is limited, perpetually; II. To sue and be sued in any court of law or equity; III. To make and use a common seal, and alter the same at pleasure; IV. To hold, purchase, and convey such real and personal estate as the purposes of the corporation shall require, and all other real estate which shall have been bona fide conveyed or mortgaged to the said corporation by way of security, or in satisfaction of debts, or purchased at sales upon judgment or decree obtained for such debts; and to mortgage any such real or personal estate with its franchises; the power to hold real and personal estate shall include the power to take the same by devise or bequest; V. To appoint such officers and agents as the business of the corporation shall require, and to allow them suitable compensation; VI. To make by-laws fixing and altering the number of its directors, and providing for the management of its property, the regulation and government of its affairs, and the transfer of its stock, with penalties for the breach thereof not exceeding twenty dollars; VII. To wind up and dissolve itself, or be wound up and dissolved in manner hereafter mentioned.

**Sec. 2. Additional powers.** In addition to the powers enumerated in the first section of this act and the powers specified in its charter or in the act or certificate under which it was incorporated, every corporation, its officers, directors, and

stockholders, shall possess and exercise all the powers and privileges contained in this act, so far as the same are necessary or convenient to the attainment of the objects set forth in such charter or certificate of incorporation; and shall be governed by the provisions and be subject to the restrictions and liabilities in this act contained, so far as the same are appropriate to and not inconsistent with such charter or the act under which such corporation was formed; and no corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the powers so given.

**Sec. 3. Banking powers never implied.** No corporation created or to be created under the provisions of this act shall, by any implication or construction, be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, or of receiving deposits of money, of buying gold or silver bullion or foreign coins, or of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt, upon loan or for circulation as money.

**Sec. 4. Charters subject to legislative alteration.** The charter of every corporation, or any supplement thereto or amendment thereof, shall be subject to alteration, suspension, and repeal, in the discretion of the legislature, and the legislature may at pleasure dissolve any corporation.

See Laws, 1905, c. 5.

**Sec. 5. Amendment to act not to impair remedy against corporations, etc.** This act may be amended or repealed, at the pleasure of the legislature, and every corporation created under this act shall be bound by such amendment; but such amendment or repeal shall not take away or impair any remedy against any such corporation or its officers for any liability which shall have been previously incurred; this act and all amendments thereof shall be a part of the charter of every corporation heretofore or hereafter formed hereunder, except so far as the same are inapplicable and inappropriate to the objects of such corporation.

## II. Formation, constitution, alteration, dissolution.

**Sec. 6. Association for business purposes lawful. Certificate to be filed. Proviso.** Upon executing, recording, and filing a certificate pursuant to all the provisions of this act, three or more persons may become a corporation for any lawful purpose or purposes whatever, other than a savings bank, a building and loan association, an insurance company, a surety company, a railroad company, a telegraph company, a telephone company, a canal company, a turnpike company, or other company which shall need to possess the right of taking and condemning lands in this state, or other than a corporation provided for by "An act concerning banks and banking (Revision of 1899)", or by "An act concerning trust companies (Revision of 1899)", or by "An act concerning safe deposit companies (Revision of 1899)". It shall, however, be lawful to form a company hereunder for the purpose of constructing, maintaining and operating railroads, telephone or telegraph lines outside of this state; provided, that any company organized under the provisions of this act for cremation purposes shall, before beginning business, file a certified copy of its certificate of incorporation with the state board of health and obtain from said board a license to carry on said business, under such rules and regulations as said board may prescribe.

**Sec. 7. Corporations may conduct business and hold property in other states. Proviso.** Any corporation of this state, heretofore or hereafter organized under the laws of this state, may conduct business, have one or more offices, and hold, purchase, mortgage, and convey real and personal property outside of this state in any of the several states, territories, possessions, and dependencies of the United States, the District of Columbia, and in foreign countries; provided, such powers are included within the objects set forth in its certificate of incorporation or charter.

**Sec. 8. Certificate. Contents.** The certificate of incorporation shall be signed in person by all the subscribers to the capital stock named therein, and shall set forth: I. The name of the corporation; no name shall be assumed already in use by another existing corporation of this state, or so nearly similar thereto as to lead to uncertainty or confusion; II. The location (town or city, street and number, if number there be) of its principal office in the state; III. The object or objects for which the corporation is formed; IV. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars, the number of shares into which the same is divided and the par value of each share;

the amount of capital stock with which it will commence business, which shall not be less than one thousand dollars; and, if there be more than one class of stock created by the certificate of incorporation, a description of the different classes, with the terms on which the respective classes of stock are created; V. The names and post-office address of the incorporators and the number of shares subscribed for by each; the aggregate of such subscriptions shall be the amount of capital stock with which the company will commence business, and shall be at least one thousand dollars; VI. The period, if any, limited for the duration of the company; VII. The certificate of incorporation may also contain any provision which the incorporators may chose to insert, for the regulation of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting, and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of stockholders; provided, such provision be not inconsistent with this act.

**Sec. 9. Certificates to be recorded and filed. Copy evidence.** The certificate of incorporation shall be proved or acknowledged as required for deeds of real estate, and recorded in a book to be kept for that purpose in the office of the clerk of the county where the principal office of such corporation in this state shall be established, and, after being so recorded, shall be filed in the office of the secretary of state; said certificate or a copy thereof duly certified by the secretary of state, shall be evidence in all courts and places.

**Sec. 10. Upon filing and recording, persons associating incorporated.** Upon making the certificate of incorporation and causing the same to be recorded and filed as aforesaid, the persons so associating, their successors and assigns, shall, from the date of such filing, be and constitute a body corporate by the name set forth in said certificate, subject to dissolution as in this act elsewhere provided.

See Laws, 1904, c. 148.

**Sec. 11. Power to make by-laws.** The power to make and alter by-laws shall be in the stockholders, but any corporation may, in the certificate of incorporation, confer that power upon the directors; by-laws made by the directors under power so conferred may be altered or repealed by the stockholders.

**Sec. 12. Corporations managed by board of directors. Chosen annually. Proviso.** The business of every corporation shall be managed by its directors, who shall respectively be shareholders therein; they shall be not less than three in number, and, except as hereinafter provided, they shall be chosen annually by the stockholders at the time and place provided in the by-laws and shall hold office for one year and until others are chosen and qualified in their stead; but by so providing in its certificate of incorporation, any corporation organized under this act may classify its directors in respect to the time for which they shall severally hold office, the several classes to be elected for different terms; provided, that no class shall be elected for a shorter period than one year or for a longer period than five years, and that the term of office of at least one class shall expire in each year; any corporation which shall have more than one kind of stock, may, by so providing in its certificate of incorporation, confer the right to choose the directors of any class upon the stockholders of any class or classes, to the exclusion of the others; one director of every corporation in this state shall be an actual resident of this state, and it shall not be necessary for more than one director to be a resident of this state, notwithstanding the provisions of any special charter or other act.

**Sec. 13. Officers; how chosen.** Every corporation organized under this act shall have a president, secretary, and treasurer, who shall be chosen either by the directors or stockholders, as the by-laws may direct, and shall hold their offices until others are chosen and qualified in their stead; the president shall be chosen from among the directors; the secretary shall be sworn to the faithful discharge of his duty, and shall record all the votes of the corporation and directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him; the treasurer shall give bond in such sum, and with such surety or sureties, as shall be required by the by-laws, for the faithful discharge of his duty.

**Sec. 14. May have other officers and agents.** The corporation may have such other officers, agents, and factors, who shall be chosen in such manner and hold their office for such terms as may be prescribed by the by-laws.

**Sec. 15. Vacancies; how filled.** Any vacancy occurring among the directors or in the office of president, secretary, or treasurer by death, resignation, removal,



or otherwise, shall be filled in the manner provided for in the by-laws; in the absence of such provision such vacancies shall be filled by the board of directors.

**Sec. 16. Meetings; how called.** The first meeting of every corporation shall be called by a notice, signed by a majority of the incorporators, designating the time, place, and purpose of the meeting, which notice shall be published at least two weeks before the meeting in some newspaper of the county where the corporation is established; or said first meeting may be called without publication if two days' notice be personally served on all the incorporators; or if all the incorporators shall, in writing, waive notice and fix a time and place of meeting, no notice or publication shall be required; whenever under any of the provisions of this act, or any amendment thereto, a corporation is authorized to take any action after notice to its members or stockholders, or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of any period of time, if such action be authorized or approved and such requirements be waived, in writing, by every member or stockholder of such corporation or by his attorney thereunto authorized.

**Sec. 17. Absent stockholders may vote by proxy. Certificate or by-laws to regulate meetings. Proviso.** Absent stockholders may vote at all meetings by proxy in writing; and every corporation may determine by its certificate of incorporation or by-laws the manner of calling and conducting all meetings, what number of shares shall entitle the stockholders to one or more votes, what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting in order to constitute a quorum, and may by its original or amended certificate of incorporation provide that any action which now requires the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or requires their consent in writing to be filed, may be taken upon the consent of and the consent given and filed by the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy; provided, in no case shall more than a majority of shares or amount of interest be required to be represented at any meeting in order to constitute a quorum; if the quorum shall not be so determined by the corporation, a majority in interest of the stockholders, represented either in person or by proxy, shall constitute a quorum.

**Sec. 18. Power to issue common and preferred stock.** Every corporation organized under this act shall have power to create two or more kinds of stock, of such classes, with such designations, preferences and voting powers or restrictions or qualifications thereof as shall be stated and expressed in the certificate of incorporation or in any certificate of amendment thereof; and the power to increase or decrease the stock as in this act elsewhere provided shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stocks issued and outstanding exceed two-thirds of the capital stock paid for in cash or property, and such preferred stocks may, if desired, be made subject to redemption at any time after three years from the issue thereof, at a price not less than par, and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, dividends at such rates and on such conditions as shall be stated in the original or amended certificate of incorporation, not exceeding eight per centum per annum, payable quarterly, half yearly or yearly; and such dividends may be made payable before any dividends shall be set apart or paid on the common stock, and such dividends may be made cumulative; provided, the corporation shall set apart or pay the said dividends to the holders of non-cumulative preferred stock before any dividend shall be paid on the common stock; and in no event shall a holder of preferred stock be personally liable for the debts of the corporation; but in case of insolvency its debts or other liabilities shall be paid in preference to the preferred stock; the terms "general stock" and "common stock" are synonymous.

**Sec. 19. Certificate of stock.** Every stockholder shall have a certificate, signed by the president and treasurer, certifying the number of shares owned by him in such corporation.

**Sec. 20. Stock; how transferred.** The shares of stock in every corporation shall be personal property, and shall be transferable on the books of the corporation in such manner and under such regulations as the by-laws provide; and whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.



**Sec. 21. Stockholders bound to pay full amount of shares.** Where the whole capital of a corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the corporation, or such proportion of that sum as shall be required to satisfy such debts and obligations.

**Sec. 22. Assessments on stock.** The directors of every corporation may, from time to time, make assessments upon the shares of stock subscribed for, not exceeding, in the whole, the par value thereof; and the sums so assessed shall be paid to the treasurer at such times and by such installments as the directors shall direct, said directors having given thirty days' notice of the assessment and of the time and place of payment either personally or by mail or by publication in a newspaper published in the county where the corporation is established.

**Sec. 23. Penalty for non-payment of assessments.** If the owner of any shares shall neglect to pay any sum assessed thereon for thirty days after the time appointed for payment, the treasurer, when ordered by the board of directors, shall sell at public auction, such number of the shares of the delinquent owner as will pay all assessments then due from him, with interest, and all necessary incidental charges, and shall transfer the shares sold to the purchaser, who shall be entitled to a certificate therefor.

**Sec. 24. Proceedings for sale of shares.** The treasurer shall give notice of the time and place appointed for the sale, and of the sum due on each share, by advertising the same three weeks successively, once in each week, before the sale, in some newspaper published in the county where the corporation is established, and by mailing a notice thereof to the delinquent stockholder, if he knows his post-office address.

**Sec. 25. Certificate of payment of capital stock. To be filed.** The president and secretary, or treasurer, upon payment of each installment of capital stock, and of every increase thereof, shall make a certificate, stating the amount of the capital so paid, and whether paid in cash or by the purchase of property, stating also the total amount of capital stock, if any, previously paid and reported; which certificate shall be signed and sworn to by the president and secretary or treasurer, and they shall, within ten days after such payment, cause the certificate to be filed in the office of the secretary of state.

See Laws, 1898, c. 172.

**Sec. 26. Penalty for not making certificate.** If any of said officers shall neglect or refuse to perform the duties required of them in the preceding section for thirty days after written request so to do by a creditor or stockholder of the corporation, they shall be jointly and severally liable for all its debts contracted before the filing of such certificate.

**Sec. 27. Corporations may increase capital, etc., and change original certificates of incorporations. Certificates to be filed. Proviso.** Every corporation organized under this act may change the nature of its business, change its name, increase its capital stock, decrease its capital stock, change the par value of the shares of its capital stock, change the location of its principal office in this State, extend its corporate existence, change its common stock into one or more classes of preferred stock, create one or more classes of preferred stock, and make such other amendment, change or alteration as may be desired, in manner following: The board of directors shall pass a resolution declaring that such change or alteration is advisable and calling a meeting of the stockholders to take action thereon. The meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision upon ten days' notice given personally or by mail. If two-thirds in interest of each class of the stockholders having voting powers shall vote in favor of such amendment, change or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two-thirds in interest of each class of such stockholders, shall be filed in the office of the secretary of state, and upon the filing of the same, the certificate of incorporation shall be deemed to be amended accordingly; provided, that such certificate of amendment, change or alteration shall contain only such provision as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment, and

the certificate of the secretary of state that such certificate and assent have been filed in his office shall be taken and accepted as evidence of such change or alteration in all courts and places. Nothing in this act contained shall be construed in any way to amend, alter, or modify the provisions of section eighteen of the act to which this act is a supplement.

**Sec. 28. Other corporations may change their certificates.** Any corporation of this state whether organized under a special act of incorporation or under general laws, excepting railroad and canal corporations, and other corporations possessing the right of taking and condemning lands, may increase or decrease its capital stock, change its name, the par value of the shares of its capital stock, or the location of its principal office in or out of this state, change its common stock into one or more classes of preferred stock, create one or more classes of preferred stock, and fix any method of altering its by-laws permitted by the act to which this is a supplement, in the manner prescribed in the foregoing section, and any corporation may, in the same manner, relinquish one or more branches of its business, or extend its business to such branches as might have been inserted in its original certificate of incorporation. Nothing in this act contained shall be construed in any way to amend, alter, or modify the provisions of section eighteen of the act to which this act is a supplement.

**Sec. 29. Decrease of capital stock; how effected. Proviso.** The decrease of capital stock may be effected by retiring or reducing any class of the stock, or by drawing the necessary number of shares by lot for retirement, or by the surrender by every shareholder of his shares, and the issue to him in lieu thereof of a decreased number of shares, or by the purchase at not above par of certain shares for retirement, or by retiring shares owned by the corporation or by reducing the par value of shares; and when any corporation shall decrease the amount of its capital stock hereinbefore provided, the certificate decreasing the same shall be published for three weeks successively, at least once in each week, in a newspaper published in the county in which the principal office of the corporation is located; the first publication to be made within fifteen days after the filing of such certificate, and in default thereof the directors of the corporation shall be jointly and severally liable for all debts of the corporation contracted before the filing of the said certificate, and the stockholders shall also be liable for such sums as they may respectively receive of the amount so reduced; provided, no such decrease of capital stock shall release the liability of any stockholder, whose shares have not been fully paid, for debts of the corporation theretofore contracted, nor affect any reduction of the taxes that may be required to be paid by the charters of corporations incorporated by special acts.

**Sec. 30. Unlawful to declare dividends except from surplus or profits. When directors liable. Proviso.** The directors of a corporation shall not make dividends except from its surplus, or from the net profits arising from the business of such corporation, nor shall it divide, withdraw, or in any way pay to the stockholders or any of them, any part of the capital stock of such corporation, or reduce its capital stock except as authorized by law; in case of any wilful or negligent violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or who not then being present, shall have caused their dissent therefrom to be so entered upon learning of such action, shall jointly and severally be liable at any time within six years after paying such dividend, to the stockholders of such corporation, severally and respectively, to the full amount of any loss sustained by such stockholders, or in case of insolvency to the corporation or its receiver to the full amount of any loss sustained by the corporation, by reason of such withdrawal, division, or reduction. 2. This act shall take effect immediately, but shall not affect any action or proceeding pending in any court at the time it takes effect, or any right of any corporation, or of any creditor or stockholder of any corporation, against any director under existing law.

**Sec. 31. How companies may be dissolved.** Whenever, in the judgment of the board of directors, it shall be deemed advisable and most for the benefit of such corporation that it should be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, of which meeting every director shall have received at least three

days' notice, shall cause notice of the adoption of such resolution to be mailed to each stockholder residing in the United States, and also beginning within said ten days cause a like notice to be published in a newspaper published in the county wherein the corporation shall have its principal office, at least four weeks successively, once a week, next preceeding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolutions so adopted by the board of directors, which meeting shall be held between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so named, and which meeting may, on the day so appointed, by consent of a majotity in interest of the stockholders present, be adjourned from time to time for not less than eight days at any one time, of which adjourned meeting notice by advertisement in said newspaper shall be given; and if at any such meeting two-thirds in interest of all the stockholders shall consent that a dissolution shall take place and signify their consent in writing, such consent, together with a list of the names and residences of the directors and officers, certified by the president and the secretary or treasurer, shall be filed in the office of the secretary of state, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed, and the board of directors shall cause such certificate to be published four weeks successively, at least once a week, in a newspaper published in said county; and upon the filing in the office of the secretary of state of an affidavit that said certificate has been so published, the corporation shall be dissolved and the board shall proceed to settle up and adjust its business and affairs; whenever all the stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary, but on filing said consent in the office of the secretary of state he shall forthwith issue a certificate of dissolution, which shall be published as above provided.

**Sec. 32. Incorporators may surrender rights and franchise.** Incorporators may dissolve corporation. The incorporators named in any certificate of incorporation, before the payment of any part of the capital, and before beginning the business for which the corporation was created, may surrender all their corporate rights and franchises, by filing in the office of the secretary of state a certificate, verified by oath, that no part of the capital has been paid and such business has not been begun, and surrendering all rights and franchises, and thereupon the said corporation shall be dissolved.

### III. Elections; stockholders' meetings.

**Sec. 33. Books to be open to inspection. Duties of secretary. Penalty for refusing to exhibit books, etc.** Every corporation shall keep at its principal and registered office in this state the transfer books in which the transfer of stock shall be registered, and the stock books, which shall contain the name and address of the stockholders, the number of shares held by them respectively, which shall at all times during the usual hours for business be open to the examination of every stockholder; the directors shall cause the secretary, or other officer designated by them having charge of said books, to make, at least ten days before every election after the first election, a full, true and complete list, in alphabetical order, of all the stockholders entitled to vote at the ensuing election, with the residence of each, and the number of shares held by each, which list shall at all times during the usual hours for business be kept at such principal and registered office, and open to the examination of any stockholder at said office, and if any officer having charge of such books or list shall, upon demand by any stockholder, refuse or neglect to exhibit such books or list, or submit them to examination as aforesaid, he shall for every such offense forfeit the sum of two hundred dollars, one-half thereof to the use of the state of New Jersey and the other half to him who will sue for the same, to be recovered by action of debt in any court of record, together with costs of suit, and the books aforesaid shall be the only evidence as to who are the stockholders entitled to examine such books or list, and to vote at such election; and the board of directors shall produce at the time and place of such election such books and list, there to remain during the election, and the neglect or refusal of said directors to produce the same shall render them ineligible to any office at such election.

**Sec. 34. Elections to be by ballot.** All elections for directors shall be by ballot, unless otherwise expressly provided in the charter or certificate of incorporation;

the poll at every such election shall be opened between the hours of nine o'clock in the morning and five o'clock in the afternoon, and shall close before nine o'clock in the evening; the same shall remain open at least one hour, unless all of the stockholders are present in person or by proxy and have sooner voted, or unless all the stockholders waive this provision in writing; the persons receiving the greatest number of votes shall be the directors; provided, however, that unless otherwise provided in the original or amended certificate of incorporation, or in the by-laws approved at a stockholders' meeting, in all corporations formed under the provisions of this act, a majority in interest of all the stockholders shall be present in person or by proxy to constitute a quorum.

**Sec. 35. No candidate to act as judge, etc., of election.** No person who is a candidate for the office of director shall act as judge, inspector, or clerk of any election for directors; and if any candidate shall so act and be elected, his election shall be void, and the directors shall not appoint such person a director within twelve months next succeeding; this section shall not apply to the first election of directors.

**Sec. 36. Each share entitled to a vote. Proxies allowed.** Regulations as to voting. Unless otherwise provided in the charter, certificate, or by-laws of the corporation, at every election each stockholder, whether resident or non-resident, shall be entitled to one vote in person or by proxy for each share of the capital stock held by him, but no proxy shall be voted on after three years from its date; nor shall any share of stock be voted on at any election which has been transferred on the books of the corporation within twenty days next preceding such election.

See Laws, 1900, c. 172.

**Sec. 37. Persons holding stock as executors, etc., may vote.** Every person holding stock as executor, administrator, guardian, or trustee, or in any other representative or fiduciary capacity, may represent the same at all meetings of the corporation, and may vote thereon as a stockholder, and every person who shall pledge his stock as collateral security may, nevertheless, represent the same at all such meetings, and may vote thereon as a stockholder, unless in the transfer to the pledgee on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may represent said stock and vote thereon.

**Sec. 38. Stock owned by corporation not to be voted.** Shares of stock of a corporation belonging to said corporation shall not be voted upon directly or indirectly.

**Sec. 39. Directors to be stockholders.** No person shall be elected a director of any corporation issuing stock unless he shall be, at the time of his election, a bona fide holder of some of the stock thereof; and any director ceasing to be a bona fide holder of some of the stock thereof shall cease to be a director; any corporation may, by its certificate of incorporation or by-laws, determine how many shares a person shall hold to qualify him to be a director.

**Sec. 40. Transfer books to determine who are stockholders.** In case the right to vote upon any share of stock shall be questioned, the inspectors of the election shall refer to the stock books of the corporation to ascertain who are the stockholders, and in case of a discrepancy between the books, the transfer book shall control and determine who are entitled to vote.

**Sec. 41. Failure to hold election. Failure to elect directors not to dissolve corporation.** If the election for directors of any corporation shall not be held on the day designated by the act or certificate of incorporation or by-laws, the directors shall cause the election to be held as soon thereafter as conveniently may be; no failure to elect directors at the designated time shall work any forfeiture or dissolution of the corporation, but any justice of the supreme court may summarily order an election to be held upon the application of any stockholder, and may punish the directors for contempt of court for failure to obey the order.

**Sec. 42. Supreme court may proceed summarily to review proceedings at elections.** The supreme court, upon application of any person who may be aggrieved by or complain of any election, or any proceeding, act or matter in or touching the same, reasonable notice having been given to the adverse party, or to those who are to be affected thereby, of such intended application, shall proceed forthwith, and in a summary way hear the affidavits, proofs, and allegations of the parties, or otherwise inquire into the matter or causes of complaint, and thereupon establish

the election so complained of, or order a new election, or make such order, and give such relief in the premises as right and justice may require; the court may, if the case require it, either order an issue to be made up in manner and form as it may direct, to try the rights of the respective parties to the office or franchise in question, or may give leave to exhibit or direct the attorney-general to exhibit, an information in the nature of a quo warranto in relation thereto.

See Laws, 1899, c. 213.

**Sec. 43. All corporations to file statement of election of officers and directors annually. Penalty for failure to comply with this section.** Every domestic corporation and every foreign corporation doing business within this state, shall file in the office of the secretary of state within thirty days after the first election of directors and officers and annually thereafter within thirty days after the time appointed for holding the annual election of directors, a report authenticated by the signatures of the president and one other officer, or by any two directors of the company, stating: I. The name of the corporation; II. The location (town or city, street and number, if number there be) of its registered office in this state, and the name of the agent upon whom process against the corporation may be served; III. The character of its business; IV. The amount of its authorized capital stock, if any, and the amount actually issued and outstanding; V. The names and addresses of all the directors and officers of the company and when the term of office of each expires; VI. The date appointed for the next annual meeting of the stockholders for the election of directors; VII. Whether the name of such corporation has been at all times displayed at the entrance of its registered office in this state, and whether such corporation has kept at this registered office in this state a transfer book in which the transfers of stock are made, and a stock book containing the names and addresses of the stockholders and the number of shares held by them respectively, open at all times to the examination of the stockholders as required by law; provided, however, that the requirement of this subdivision shall not apply to foreign corporations nor to any railroad or canal corporation; and further provided, that no part of this section shall apply to corporations as are now by law under the supervision of the department of banking and insurance; if such report is not so made and so filed the corporation shall forfeit to the state two hundred dollars, to be recovered with costs in an action of debt, to be prosecuted by the attorney-general, who shall prosecute such actions whenever it shall appear that this section has been violated; and further provided, if such report be not so made and filed, all of the directors of any such domestic corporation who shall wilfully refuse to comply with the provisions hereof and who shall be in office during the default shall at the time appointed for the next election, and for a period of one year thereafter, be thereby rendered ineligible for election or appointment to any office in the company as directors or otherwise; no director shall be thus disqualified for the failure to make and file such report if he shall file with the secretary of state before the time appointed for holding the next election of directors after said default, a certificate stating that he has endeavored to have such report made and filed, but that the officers have neglected to make and file the same, and shall report the items required to be stated in such annual report so far as they are within his knowledge or are obtainable from sources of such information open to him, verified by him to be true to the best of his knowledge, information, and belief; the secretary of state shall upon application furnish blanks in proper form and shall safely keep in his office all such reports and shall prepare an alphabetical index thereof, which reports and index shall be open to the inspection of all persons at proper hours.

2. In case any domestic corporation, or any foreign corporation authorized to transact business in this state, shall fail to file such report within the time required by this section, or in case the agent of any such corporation designated by any such corporation as the agent upon whom process against the corporation may be served shall die, or shall resign, or shall remove from the state, or such agent cannot with due diligence be found, it shall be lawful, while such default continues, to serve process against any such corporation upon the secretary of state, and such service shall be as effective to all intents and purposes as if made upon the president or head officer of such corporation, and within two days after such service upon the secretary of state as aforesaid, it shall be the duty of the secretary of state to notify such corporation thereof by letter directed to such corporation at its registered office, in which letter shall be inclosed a copy of the process or other paper served,

and it shall be the duty of the plaintiff in any action in which said process shall be issued to pay to the secretary of state, for the use of the state, the sum of three dollars, which said sum shall be taxed as a part of the taxable costs in said suit if the plaintiff prevails therein; the secretary of state shall keep a book to be called the "process book", in which shall be recorded alphabetically, by the name of the plaintiff and defendant therein, the title of all causes in which processes have been served upon him, the test of the process so served and the return day thereof, and the date and hour when such service was made.

3. The terms "principal office", "principal office in this state" and "registered office", wherever used in this act, shall be construed as synonymous terms.

See Laws, 1898, c. 173. — Laws, 1903, c. 149.

**Sec. 44. Meetings of stockholders to be in this state when not otherwise provided by law. Directors may hold meetings outside of state. Principal office and agent in this state. Court may order books brought within this state.** In all cases where it is not otherwise provided by law, the meetings of the stockholders of every corporation of this state shall be held at its principal office in this state; the directors may hold their meetings, and have an office, and keep the books of the corporation (except the stock and transfer books) outside of this state, if the by-laws or certificate of incorporation so provide; every corporation shall maintain a principal office in this state, and have an agent in charge thereof, wherein shall be kept the stock and transfer books for the inspection of all who are authorized to see the same, and for the transfer of stock; the court of chancery or the supreme court, or any justice thereof, may, upon proper cause shown, summarily order any or all of the books of said corporation to be forthwith brought within this state, and kept therein at such place and for such time as may be designated in such order, and the charter of any corporation failing to comply with such order may be declared forfeited by the court making such order, and it shall thereupon cease to be a corporation, and all its directors and officers shall be liable to be punished for contempt of court for disobedience of such order.

**Sec. 45. Penalty for failure to display name of corporation at entrance of office.** The name of every corporation shall be at all times conspicuously displayed at the entrance of its principal office in this state, and in default thereof the directors shall be jointly and severally liable to a penalty of two hundred dollars, to be recovered with costs, by the state, before any court of competent jurisdiction, by action to be prosecuted by the attorney-general; and they shall jointly and severally be liable to a like penalty for every thirty days' additional default from and after the service of process in the first action, to be recovered in like manner.

**Sec. 46. Calling of meetings by stockholders.** Whenever, for any reason, a legal meeting of the stockholders of any corporation cannot be otherwise called three or more stockholders having voting powers may call such meeting by publishing ten days' notice of the time, place, and purposes of the meeting in a newspaper published in the county in which its principal office in this state is located, and mailing such notice to all stockholders whose post-office address is known or can be ascertained; a meeting called as aforesaid shall be a legal meeting of the corporation, and if there be no officers present, the stockholders may elect officers for the meeting; and the secretary of the meeting shall record the proceedings thereof in the book of minutes of the corporation.

#### IV. Dividends; payment of capital stock.

**Sec. 47. Directors to declare dividends annually. Proviso.** Unless otherwise provided in the original or amended certificate of incorporation, or in a by-law adopted by a vote of at least a majority of the stockholders, the directors of every corporation created under this act shall, in January in each year, after reserving over and above its capital stock paid in, as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand.

**Sec. 48. Payment of capital stock to be in money, and no loans to stockholders.** Nothing but money shall be considered as payment of any part of the capital stock of any corporation organized under this act, except as hereinafter provided in case of the purchase of property, and no loan of money shall be made to a stockholder or officer thereof; and if any such loan be made the officers who make it, or assent

thereto, shall be jointly and severally liable, to the extent of such loan and interest, for all the debts of the corporation until the repayment of the sum so loaned.

**Sec. 49. Corporations may purchase property and issue stock.** Any corporation formed under this act may purchase mines, manufactories, or other property necessary for its business, or the stock of any company or companies owning, mining, manufacturing, or producing materials, or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this act; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation to be published or filed this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact.

**Sec. 50. Certain corporations may subscribe, hold, and dispose of stock and bonds of other companies. Directors may accept in payment of subscriptions, etc., stock of other corporations.** Corporations having for their object the building, constructing, or repairing of railroads, water, gas or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers or any like works of internal improvement or public use or utility, may subscribe for, take, pay for, hold, use, and dispose of stock or bonds in any corporations formed for the purpose of constructing, maintaining, and operating any such public works; and the directors of any such corporation formed for the purpose of constructing, maintaining, and operating any public work of the description aforesaid may accept in payment of any such subscription, or purchase, real or personal property, necessary for the purposes of such corporation, or work, labor, and services performed or materials furnished to or for such corporation to the amount of the value thereof, and from time to time issue upon any such subscription or purchase, in such installments or proportions as such directors may agree upon, full-paid stock in full or partial performance of the whole or any part of such subscription or purchase, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payments, and in all statements and reports of the corporation to be published or filed this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact.

**Sec. 51. Corporations authorized to hold, sell, and dispose of stock and bonds of other corporations.** Any corporation may purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock of, or any bonds, securities, or evidences of indebtedness created by any other corporation or corporations of this or any other state, and while owner of such stock may exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.

**Sec. 52. Officers signing false certificates liable for debts of corporations.** If any certificate made, or any public notice given by the officers of any corporation, in pursuance of the provisions of this act, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the corporation contracted while of they were stockholders or officers thereof, as a penalty enforceable in the courts this state only.

## V. Winding-up.

**Sec. 53. Continuance of corporate existence for settling up business.** All corporations, whether they expire by their own limitation or be annulled by the legislature or otherwise dissolved, shall be continued bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital, but not for the purpose of continuing the business for which they were established.

See Laws, 1900, c. 126.

**Sec. 54. Directors to be trustees upon dissolution.** Upon the dissolution in any manner of any corporation the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying

its debts, as far as such moneys and property shall enable them: they shall have power to meet and act under the by-laws of the corporation and, under regulations to be made by a majority of said trustees, to prescribe the terms and conditions of the sale of such property, and may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of said property. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequent thereto, the surviving directors or director shall be the trustees or trustee thereof, as the case may be, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them, and to do and perform all such other acts as shall be necessary to carry out the provisions of this act relative to the winding up of the affairs of such corporation and to distribution of its assets.

**Sec. 55. Powers and liabilities of trustees.** The directors, constituted trustees as aforesaid, shall have authority to sue for and recover the aforesaid debts and property, by the name of the corporation, and shall be sueable by the same name, or in their own names or individual capacities, for the debts owing by such corporation, and shall be jointly and severally responsible for such debts, to the amount of the moneys and property of the corporation which shall come to their hands or possession as such trustees.

**Sec. 56. Appointment of receiver to wind up company on petition.** When any corporation shall be dissolved in any manner whatever, the court of chancery, on application of any creditor or stockholder at any time, may either continue the directors trustees as aforesaid, or appoint one or more persons to be receivers of such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all suits necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of its unfinished business; and the powers of such trustees or receivers may be continued as long as the court shall think necessary for such purposes.

**Sec. 57. Jurisdiction of court of chancery.** The court of chancery shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such orders and decrees therein as justice and equity shall require.

**Sec. 58. Duties of receiver.** Disposition of proceeds by trustees or receivers. The said trustees or receivers shall pay ratably, as far as its moneys and property shall enable them, all the creditors of the corporation who prove their debts in the manner directed by the court; and if any balance remain after the payment of such debts and necessary expenses, the same shall be distributed among the stockholders.

**Sec. 59. Suits not to abate on dissolution.** Any action, now pending or to be hereafter begun, against any corporation which may become dissolved before final judgment, shall not abate by reason thereof, but no judgment shall be entered therein except upon notice to the trustees or receivers of the corporation.

**Sec. 60. Copy of decree of dissolution to be filed in office of secretary of state.** A copy of every decree or judgment dissolving a corporation or forfeiting its charter shall be forthwith filed by the clerk of the court in the office of the secretary of state, and a note thereof shall be made by the secretary of state on the charter or certificate of incorporation, and in the index thereof, and be published by him in the annual volume of laws.

## VI. Execution against corporation.

**Sec. 61. On execution, schedule of property, etc., to be furnished.** Every agent or person having charge or control of any property of a corporation, on request of any public officer, having for service a writ of execution against it, shall furnish to him the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due to it, so far as he may have knowledge of the same.

**Sec. 62. Execution may be satisfied by debts due the corporation. Penalty.** If any officer, holding an execution, shall be unable to find other property belonging to the corporation liable to execution, he or the judgment creditor may elect to



satisfy such execution, in whole or in part, by any debts due to the corporation; and it shall be the duty of any agent or person having custody of any evidence of such debt, to deliver the same to the officer, for the use of the creditor, and such delivery, with a transfer to the officer in writing, for the use of the creditor, and notice to the debtor, shall be a valid assignment thereof; and such creditor may sue for and collect the same in the name of the corporation, subject to such equitable set-offs on the part of the debtor as in other assignments; and every agent or person who shall neglect or refuse to comply with the provisions of this and the last preceding section, shall be himself liable to pay to the execution creditor the amount due on said execution, with costs.

## VII. Insolvency.

**Sec. 63. Duties of directors in case of insolvency. Exhibit to be made.** Whenever any corporation shall become insolvent, the directors, within ten days thereafter, shall call a meeting of the stockholders, and lay before them for inspection and examination all the books of accounts, by-laws and minutes of the corporation, and exhibit a full and true statement of all its estate, funds, and property, and of all the debts due and owing to it, and by whom, and of all the debts owing by it, and to whom, as far as the directors can at that time make out the same; so as to exhibit to the stockholders a full, fair, and true account of the situation of the affairs of the corporation.

**Sec. 64. Unlawful to convey, sell, etc., property in case of insolvency. Proviso.** Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, neither the directors nor any officer or agent of the corporation shall sell, convey, assign, or transfer any of its estate, effects, choses in action, goods, chattels, rights or credits, lands or tenements; nor shall they or either of them make any such sale, conveyance, assignment, or transfer in contemplation of insolvency, and every such sale, conveyance, assignment, or transfer shall be utterly null and void as against creditors: provided, that a bona fide purchase for a valuable consideration, before the corporation shall have actually suspended its ordinary business, by any person without notice of such insolvency or of the sale being made in contemplation of insolvency, shall not be invalidated or impeached.

**Sec. 65. Remedy in chancery by bill, etc. May issue injunction.** Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, any creditor or stockholder may by petition or bill of complaint setting forth the facts and circumstances of the case, apply to the court of chancery for a writ of injunction and the appointment of a receiver or receivers or trustees, and the court being satisfied by affidavit or otherwise of the sufficiency of said application, and of the truth of the allegations contained in the petition or bill, and upon such notice, if any, as the court by order may direct, may proceed in a summary way to hear the affidavits, proofs, and allegations which may be offered on behalf of the parties, and if upon such inquiry it shall appear to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter with safety to the public and advantage to the stockholders, it may issue an injunction to restrain the corporation and its officers and agents from exercising any of its privileges or franchises and from collecting or receiving any debts, or paying out, selling, assigning, or transferring any of its estate, moneys, funds, lands, tenements, or effects, except to a receiver appointed by the court, until the court shall otherwise order.

**Sec. 66. Court may appoint receivers; powers of receivers.** The court of chancery, at the time of ordering said injunction, or at any time afterwards, may appoint a receiver or receivers or trustees for the creditors and stockholders of the corporation, with full power and authority to demand, sue for, collect, receive and take into their possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description of the corporation, and to institute suits at law or in equity for the recovery of any estate, property, damages, or demands existing in favor of the corporation, and in his or their discretion to compound and settle with any debtor or creditor of the corporation, or with persons having possession of its property or in any way responsible at law or in equity to the corporation at the time of its insolvency or suspension of business, or afterwards, upon such terms and in

such manner as he or they shall deem just and beneficial to the corporation, and in case of mutual dealings between the corporation and any person to allow just set-offs in favor of such person in all cases in which the same ought to be allowed according to law and equity; a debtor who shall have in good faith paid his debt to the corporation without notice of its insolvency or suspension of business, shall not be liable therefor, and the receiver or receivers or trustees shall have power to sell, convey and assign all the said estate, rights and interests, and shall hold and dispose of the proceeds thereof under the directions of the court of chancery; the word receiver as used in this act shall be construed to include receivers and trustees appointed as provided in this act.

**Sec. 67. Oath of receiver.** Every receiver shall before acting enter into such bond and comply with such terms as the court may prescribe, and take and subscribe the following oath or affirmation: "I, \_\_\_\_\_, do swear (or affirm) that I will faithfully, honestly, and impartially execute the powers and trusts reposed in me as receiver, for the creditors and stockholders of the \_\_\_\_\_, and that without favor or affection," which oath or affirmation shall be filed in the office of the clerk in chancery within ten days after the taking thereof.

**Sec. 68. Property vested in receiver.** All the real and personal property of an insolvent corporation, wheresoever situated, and all its franchises, rights, privileges, and effects shall, upon the appointment of a receiver, forthwith vest in him, and the corporation shall be divested of the title thereto.

**Sec. 69. When debts have been paid, court may order receiver to reconvey property. Court may dissolve corporation.** Whenever a receiver shall have been appointed as aforesaid and it shall afterwards appear that the debts of the corporation have been paid or provided for, and that there remains or can be obtained by further contributions sufficient capital to enable it to resume its business, the court of chancery may, in its discretion, a proper case being shown, direct the receiver to reconvey to the corporation all its property, franchises, rights, and effects, and thereafter the corporation may resume control of and enjoy the same as fully as if the receiver had never been appointed; and in every case in which the court of chancery shall not direct such reconveyance, said court may, in its discretion, make a decree dissolving the corporation and declaring its charter forfeited and void.

**Sec. 70. Upon reorganization, may issue bonds or stock, etc., to creditors.** Whenever a majority in interest of the stockholders of such corporation shall have agreed upon a plan for the re-organization of the corporation and a resumption by it of the management and control of its property and business, such corporation may, with the consent of the court of chancery, upon the reconveyance to it of its property and franchises, mortgage the same for such amount as may be necessary for the purposes of such re-organization; and may issue bonds or other evidences of indebtedness, or additional stock, or both, and use the same for the full or partial payment of the creditors who will accept the same, or otherwise dispose of the same for the purposes of the re-organization.

**Sec. 71. Power of receivers to examine witnesses, etc.** Such receiver shall have power to send for persons and papers and to examine any persons, including the creditors and claimants, and the president, directors, and other officers and agents of the corporation, on oath or affirmation (which oath or affirmation the receiver may administer), respecting its affairs and transactions and its estate, money, goods, chattels, credits, notes, bills, and choses in action, real and personal estate and effects of every kind, and also respecting its debts, obligations, contracts, and liabilities, and the claims against it; and if any person shall refuse to be sworn or affirmed, or to make answers to such questions as shall be put to him, or refuse to declare the whole truth touching the subject-matter of the said examination, the court of chancery may, on report by the receiver, commit such person to prison, there to remain until he shall submit himself to be examined, and pay all the costs of the proceedings against him.

**Sec. 72. Power to search, etc.** Such receiver, with the assistance of a peace officer, may break open, in the daytime, the houses, shops, warehouses, doors, trunks, chests, or other places of the corporation where any of its goods, chattels, choses in action, notes, bills, moneys, books, papers, or other writings or effects, have been usually kept, or shall be, and take possession of the same, and of the lands and tenements belonging to the corporation.

**Sec. 73. Acts of receivers valid. May be removed and others appointed.** Every matter and thing by this act required to be done by receivers or trustees shall be good and effectual, to all intents and purposes, if performed by a majority of them; and the court of chancery may remove any receiver or trustee, and appoint another or others in his place or fill any vacancy which may occur.

**Sec. 74. Inventory and report.** Such receiver, as soon as convenient, shall lay before the court of chancery a full and complete inventory of all the estate, property, and effects of the corporation, its nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained, and make a report to the court of his proceedings every six months thereafter during the continuance of the trust.

**Sec. 75. Court may limit time for creditors to make proof of claims.** The court of chancery may limit the time within which creditors shall present and make proof to such receiver of their respective claims against the corporation, and may bar all creditors and claimants failing so to do within the time limited from participating in the distribution of the assets of the corporation; the court may also prescribe what notice, by publication or otherwise, shall be given to creditors of such limitation of time.

**Sec. 76. Claims to be under oath. Receiver may examine under oath.** Every claim against an insolvent corporation shall be presented to the receiver in writing and upon oath; and the claimant, if required, shall submit himself to such examination in relation to the claim as the receiver shall direct, and shall produce such books and papers relating to the claim as shall be required; and the receiver shall have power to examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of his determination.

**Sec. 77. Trial by jury allowed at the circuit.** Any creditor or claimant who shall lay his claim before such receiver may, at the same time, demand that a jury shall decide thereon, and in like manner the receiver may demand that the same shall be referred to a jury; and in either case such demand shall be entered on the minutes of the receiver, and thereupon an issue shall be made up between the parties, under the direction of one of the justices of the supreme court, and a jury impanelled, as in other cases, to try the same in the circuit court of the county in which the corporation carried on its business or had its principal office; the verdict of the jury shall be subject to the control of the supreme court, as in suits originally instituted therein, and when rendered, if not set aside by the court, shall be certified by the clerk of the supreme court to the receiver; the creditor shall be considered, in all respects, as having proved his debt or claim for the amount so ascertained to be due, and in all cases in which no trial by jury shall be demanded the court of chancery shall have jurisdiction to pass upon the claims presented and to determine the rights of the claimants, and to make such order or decree touching the same as shall be equitable and just.

**Sec. 78. Persons aggrieved by proceedings may appeal.** Every such insolvent corporation, or any person aggrieved by the proceedings or determination of such receiver in the discharge of his duty, may appeal to the court of chancery, which court shall, in a summary way, hear and determine the matter complained of, and make such order touching the same as shall be equitable and just.

**Sec. 79. Upon application, receiver to be substituted as party to suits.** Such receiver shall, upon application by him, be substituted as party plaintiff or complainant in the place and stead of the corporation in any suit or proceeding at law or in equity which was pending at the time of his appointment.

**Sec. 80. Suits not to abate by death of receiver.** No action against a receiver of a corporation shall abate by reason of his death, but, upon suggestion of the facts on the record, shall be continued against his successor, or against the corporation in case no new receiver be appointed.

**Sec. 81. Court may order receiver to sell lands, etc.** Where property of an insolvent corporation is at the time of the appointment of a receiver incumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, the court of chancery may order the receiver to sell the same, clear of incumbrances, at public or private sale, for the best price that can be obtained, and pay the money into the court, there to remain subject to the same liens and equities of

all parties in interest as was the property before sale, to be disposed of as the court shall direct.

**Sec. 82. Receiver may sell or lease principal work, chartered rights, etc. Proviso.** Whenever a receiver of a corporation shall have charge of a canal, railroad, turn-pike or other work of a public nature, in which the value of the work is dependent upon the franchise, and in the continuance of which the public as well as the stockholders and creditors have an interest, the receiver may sell or lease the principal work for the construction whereof the said corporation was organized, together with all the chartered rights, privileges, and franchises belonging to it and appertaining to such principal work; and the purchaser or purchasers, lessee or lessees of such principal work, chartered rights, privileges, and franchises, shall thereafter hold, use and enjoy the same during the whole of the residue of the term limited in the charter of said corporation, or during the term in such lease specified, in as full and ample a manner as such corporations could or might have used and enjoyed the same; subject, however, to all the restrictions, limitations, and conditions contained in such charter; provided, that nothing in this section contained shall be so construed as to apply to or in anywise affect any corporation authorized by law to exercise banking privileges.

**Sec. 83. Laborers and workmen to have first lien on assets.** In case of the insolvency of any corporation the laborers and workmen, and all persons doing labor or service of whatever character, in the regular employ of such corporation, shall have a first and prior lien upon the assets thereof for the amount of wages due to them respectively for all labor, work and services done, performed or rendered within two months next preceding the date when proceedings in insolvency shall be actually instituted and begun against such insolvent corporation.

**Sec. 84. Chattel mortgages to be first liens.** Such lien shall be prior to all other liens that can or may be acquired upon or against such assets, except the lien and incumbrance of a chattel mortgage, recorded more than two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent corporation, and except the lien and incumbrance of a chattel mortgage recorded within two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent corporation, for money loaned or for goods purchased within said period of two months; and also except as against the lien of mortgages given upon the lands and real estate of such insolvent corporation.

**Sec. 85. Compensation of receivers.** Before distribution of the assets of an insolvent corporation among the creditors or stockholders the court of chancery shall allow a reasonable compensation to the receiver for his services and the costs and expenses of the administration of his trust, and the cost of the proceedings in said court, to be first paid out of said assets.

**Sec. 86. Distribution; how made.** After payment of all allowances, expenses, and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionally to the amount of their respective debts, excepting mortgage and judgment creditors when the judgment has not been by confession for the purpose of preferring creditors; and the creditors shall be entitled to distribution on debts not due, making in such case a rebate of interest, when interest is not accruing on the same; and the surplus funds, if any, after payment of the creditors and the costs, expenses and allowances aforesaid, and the preferred stockholders, shall be divided and paid to the general stockholders proportionally, according to their respective shares.

### VIII. Service of process.

**Sec. 87. Process against corporations of this state.** In any personal action commenced against a corporation in any of the courts of law of this state, the first process to be made use of may be a summons, a copy whereof shall be served on the president, or other head officer or agent in charge of its principal office in this state, or left at his dwelling-house or usual place of abode, at least six days before its return; and in case the president or other head officer or agent cannot be found to be served with process, and has no dwelling-house, or usual place of abode within this state, a copy of the summons shall be served on the clerk or secretary of the corporation, if any there be, and if no clerk or secretary, then on one of its

directors, or left at his dwelling-house, or usual place of abode, six days before its return.

See Laws, 1907, c. 42; Laws, 1908, c. 116.

**Sec. 88. Process against foreign corporations.** In all personal suits or actions hereafter brought in any court of this state, against any foreign corporation, process may be served upon any officer, director, agent, clerk, or engineer of such corporation, either personally or by leaving a copy thereof at his dwelling-house or usual place of abode, or by leaving a copy at the office, depot, or usual place of business of such foreign corporation; provided, that in case there is no officer, director, agent, clerk, or engineer of said corporation residing in this state, nor any office, depot, or usual place of business in this state, process may be served upon any motorman, conductor, or servant of said corporation while in the discharge of his duties.

**Sec. 89. When defendant in court.** When the sheriff or other officer shall return such summons "served" or "summoned", the defendant shall be considered as appearing in court, and may be proceeded against accordingly.

**Sec. 90. Proceedings when summons returned "not served" or "not summoned."** In case the sheriff or other officer shall return a summons, issued against any corporation of this state, "not served" or "not summoned", and an affidavit shall be made to the satisfaction of the court that process cannot be served upon it, the court shall make an order directing the defendant to cause its appearance to be entered to the action, on a day to be specified in the order, a copy of which order shall be inserted in one of the newspapers published in this state, for at least three weeks, once in each week, and a copy thereof shall also be posted in three public places in this state, as shall be ordered by the court, for at least three weeks, and if the defendant shall not appear within the time limited by the order, or within such further time as the court shall limit, then, on proof of the publication and posting of the order, the court shall order the clerk to enter appearance for the defendant, and thereupon the action shall proceed as if the defendant had entered its appearance to the action.

**Sec. 91. Corporation not to alien lands during suit if order for publication is made.** No corporation against which an order for publication shall be made, as aforesaid, shall grant, bargain, sell, alien, or convey any lands, tenements, or real estate in this state (in case the said summons issued out of the supreme court), or in the county in which the said summons shall have been issued (in case the said summons issued out of the circuit court or the court of common pleas), of which it shall be seized or entitled to at the time of making such order, until the plaintiff in the action shall be satisfied his legal demand, or until a judgment shall be entered for the defendants; and the said action shall be and remain a lien on such lands, tenements and real estate, from the time of entering the said order for publication in the minutes of the court, and the said lands, tenements, and real estate shall and may be sold on execution, as if no conveyance had been made by the said corporation.

## **IX. Remedies against officers and stockholders.**

**Sec. 92. Action for liability imposed by act; remedy in chancery.** When the officers, directors, or stockholders of any corporation shall be liable to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action against any one or more of them; and the declaration shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally; or the person to whom they are liable may have his remedy by bill in chancery.

**Sec. 93. Stockholders, etc., who pay company's debts may recover.** Any officer, director, or stockholder who shall pay any debt of a corporation for which he is made liable by the provisions of this act, may recover the amount so paid, in an action against the corporation for money paid for its use, in which action only the property of the corporation shall be liable to be taken, and not the property of any stockholder.

**Sec. 94. No sale or satisfaction to be had of property until judgment is obtained.** No sale or other satisfaction shall be had of the property of any director or stockholder for any debt of the corporation of which he is such director or stockholder till judgment be obtained therefor against such corporation and execution thereon

returned unsatisfied, but any suit brought against any director or stockholder for such debts shall stay after execution levied, or other proceedings to acquire a lien, until such return shall have been made.

## X. Foreign corporations.

**Sec. 95. Foreign corporation may hold and convey lands, etc. Proviso.** Any corporation created by any other state or by any foreign state, kingdom, or government may acquire by devise or otherwise and hold, mortgage, lease, and convey real estate in this state for the purpose of prosecuting its business or objects, or such real estate as it may acquire by way of mortgage or otherwise, in the payment of debts due such corporation; provided, such foreign state, kingdom, or government, under whose laws such corporation was created, shall not be at the time of such purchase at war with the United States.

It shall be lawful for any foreign corporation whatsoever, other than municipal corporations, to purchase and convey, to lease, hold, occupy, and use for the purposes of such corporation, such real estate in this state as may be devised or conveyed to it. Laws, 1903, c. 22.

**Sec. 96. Foreign corporations subject to this act.** Foreign corporations doing business in this state shall be subject to the provisions of this act, so far as the same can be applied to foreign corporations.

**Sec. 97. Foreign corporations to file copy of charter, statement, etc., before commencing business. Certificate of authority to issue.** Every foreign corporation, except banking, insurance, ferry, and railroad corporations, before transacting any business in this state, shall file in the office of the secretary of state a copy of its charter or certificate of incorporation, attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized and the amount actually issued, the character of the business which it is to transact in this state, and designating its principal office in this state and an agent who shall be a domestic corporation or a natural person of full age actually resident in this state, together with his place of abode, upon which agent process against such corporation may be served, and the agency so constituted shall continue until the substitution, by writing, of another agent; upon the filing of such copy and statement the secretary of state shall issue to such corporation a certificate that it is authorized to transact business in this state, and that the business is such as may be lawfully transacted by corporations of this state, and he shall keep a record of all such certificates issued.

**Sec. 98. Cannot maintain actions until certificate of secretary of state is obtained. Proviso.** Until such corporation so transacting business in this state shall have obtained said certificate of the secretary of state, it shall not maintain any action in this state, upon any contract made by it in this state; provided, that nothing herein shall prevent the enforcement of any contract made prior to the fourteenth day of March, one thousand eight hundred and ninety-five.

**Sec. 99. To appoint agent in case of death. Failure to comply, authority to transact business to be revoked.** If said agent shall die, remove from the state or become disqualified, such corporation shall forthwith file in the office of the secretary of state a written appointment of another agent, attested in the manner above provided, and in case of the omission to do so within thirty days after such death, removal or disqualification, then the secretary of state, upon being satisfied that such omission has continued for thirty days, shall, by entry on the record thereof, revoke the certificate of authority to transact business within this state, and process against such corporation in actions upon any liability incurred within this state before the designation of another agent may, after such revocation, be served upon the secretary of state; at the time of such service the plaintiff shall pay to the secretary of state for the use of the state two dollars, to be included in the taxable costs of such plaintiff, and the secretary of state shall forthwith mail a copy of such process to such corporation at its general office or to the address of some officer thereof, if known to him.

**Sec. 100. Unlawful to transact business until conditions are complied with.** Every foreign corporation transacting any business in any manner whatsoever, directly or indirectly, in this state, without having first obtained authority therefor, as hereinabove provided, shall for each offense forfeit to the state the sum of two

hundred dollars, to be recovered with costs in an action prosecuted by the attorney-general in the name of the state.

Attachments may issue against . . . corporations not created or recognized as corporations of this state by the laws of this state and joint stock associations. Attachment Act; Laws 1901, p. 158, sec. 4.

**Sec. 101. Foreign corporations to pay same fees, etc., imposed upon corporations of this state by laws of other states. Proviso.** When, by the laws of any other state or nation, any other or greater taxes, fines, penalties, licenses, fees, or other obligations or requirements are imposed upon corporations of this state, doing business in such other state or nation, or upon their agents therein, than the laws of this state impose upon their corporations or agents doing business in this state, so long as such laws continue in force in such foreign state or nation, the same taxes, fines, penalties, licenses, fees, obligations, and requirements of whatever kind shall be imposed upon all corporations of such other state or nation doing business within this state and upon their agents here; provided, that nothing herein shall be held to repeal any duty, condition, or requirement now imposed by law upon such corporations of other states or nations transacting business in this state.

**Sec. 102. Writs against foreign corporations; how served.** In any proceeding in any court of this state against a foreign corporation requiring the use of any prerogative writ, such writ may be served upon the president, vice-president, secretary or other head officer, or any director, either personally or by leaving a copy at the dwelling-house or usual place of abode of such officer or director, or upon any general agent, attorney, solicitor, superintendent, or manager of such corporation.

**Sec. 103. How writs may be enforced upon failure to make return, etc.** In case any such corporation, after the service of any such writ, as aforesaid, shall neglect or refuse to make a proper return thereto, or shall neglect or refuse to obey the command of any such writ, when issued upon any judgment, order, or decree of the supreme court, court of chancery, or any of the circuit courts of this state, and served as aforesaid, within the time prescribed by such writ, said court may enforce such writs by attachment or sequestration of the property, rights, and credits of the corporation within this state.

## **XI. Merger of corporations.**

**Sec. 104. Corporations of this state may merge and consolidate.** Any two or more corporations organized or to be organized under any laws or law of this state for the purpose of carrying on any kind of business of the same or a similar nature may merge or consolidate into a single corporation, which may be either one of said merging or consolidating corporations, or a new corporation to be formed by means of such merger and consolidation; but the provisions of this act relative to merger and consolidation shall not apply to any railroad company, insurance company (except companies for the insurance or guaranty of the title to lands), banking companies, savings bank, or other corporation intended to derive profit from the loan and use of money, turnpike company, or canal company.

**Sec. 105. How consolidation or merger shall be made. Mode and proceedings for merger and consolidation. Agreement to be submitted to stockholders. Votes of two thirds of capital stock required. Agreement to be filed.** The consolidation or merger shall be made under the conditions, provisions, restrictions, and with the powers hereinafter mentioned: 1. The directors of the several corporations proposing to merge or consolidate may enter into a joint agreement under the corporate seals of the respective corporations, for the merger or consolidation of said corporations, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation (if one shall be so formed or created), or of the consolidated corporation as the case may be; the number, names and places of residence of the first directors and officers of such new or consolidated corporation, (who shall hold their offices until their successors be chosen or appointed, either according to law or according to the by-laws of the said corporation); the number of shares of the capital stock, whether common or preferred, and the amount or par value of each share of such new or consolidated corporation; and the manner of converting the capital stock of each of said merging or consolidating corporations into the stock or obligations of such new or consolidated corporation, and in case of the creation of a new corporation, how and when the directors and officers shall be chosen or appointed; together with all such



other provisions and details as such first-mentioned directors shall deem necessary to perfect the merger consolidation of said corporation. 2. The agreement shall be submitted to the stockholders of each of said merging or consolidating corporations, separately, at a meeting thereof, to be called for the purpose of taking the same into consideration; and twenty days' notice of the time, place and object of such meeting shall be mailed to the last known post-office address of each of such stockholders; and at the said meetings of stockholders the said agreement of such directors shall be considered, and a vote of the stockholders of each corporation by ballot shall be taken separately, for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy; and if the votes of the holders of two-thirds of all the capital stock of each of the said merging or consolidating corporations shall be for the adoption of said agreement, that fact shall be certified thereon by the secretary of each of the respective corporations, under the seal thereof, and the agreement, so adopted and so certified, shall be filed in the office of the secretary of state, and shall from thence be deemed and taken to be the agreement and act of merger or consolidation of the said corporations, and a copy of said agreement and act of merger or consolidation, duly certified by the secretary of state under the seal thereof, shall be evidence of the existence of such new or consolidated corporation.

**Sec. 106. Corporations merging or consolidating shall be taken one corporation.**

Upon making and perfecting the said agreement and act of merger or consolidation, and filing the same in the office of the secretary of state, the several corporations shall be one corporation, by the name provided in said agreement (in case a new corporation shall be created thereby), or by the name of the consolidated corporation into which said other contracting corporation or corporations shall be so merged or consolidated, as the case may be, and possessing all the rights, privileges, powers and franchises, as well of a public as of private nature, and being subject to all the restrictions, disabilities, and duties of each of such corporations so merged or consolidated, except as altered by the provisions of this act.

**Sec. 107. Upon merging or consolidating, rights, etc., to be vested in new corporation. Proviso.** Upon the consummation of said act of merger or consolidation, all and singular, the rights, privileges, powers, and franchises of each of said corporations, and all property, real, personal, and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations, shall be vested in the consolidated corporation; and all property, rights, privileges, powers, and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in either of such corporations, shall not revert or be in any way impaired by reason of this act: provided, that all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, and the respective former corporations may be deemed to continue in existence, in order to preserve the same; and all debts, liabilities, and duties of either of said former corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it.

**Sec. 108. Dissenting stockholders may petition court for appointment of appraisers. Appointment of appraisers. Award when confirmed to be final.** If any of the corporations so authorized to merge or consolidate shall have the right to exercise any franchise, for public use, and any stockholder thereof not voting in favor of such agreement shall dissent therefrom and shall refuse or neglect to convert his stock into the stock of such consolidated corporation, or to dispose thereof in the manner and on the terms specified in such agreement, such dissenting stockholder or such consolidated corporation may, at any time within thirty days after the adoption and filing of the agreement of consolidation, apply by petition to the circuit court of the county in which the chief office of the corporation whose stockholders shall so dissent or neglect, was or is located, on reasonable notice to be prescribed by said court to said consolidated corporation, or to such dissenting stockholder, as the case may be, for the appointment of three disinterested appraisers to appraise the full market value of his stock, without regard to any depreciation or appreciation thereof in consequence of the said merger or consolidation, and whose award



(or that of a majority of them) when confirmed by the said court, shall be final and conclusive on all parties, and said consolidated corporation shall pay to such stockholder the value of his stock as aforesaid; and on receiving such payment, or on a tender thereof, or in case of any legal disability or absence from the state, on the payment of such award into said court, said stockholder shall transfer his stock to the said consolidated corporation to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders; and in case the said award is not so paid within thirty days from the filing of said award and confirmation by said court, and notice thereof to be given in the manner aforesaid unto said stockholder or said consolidated corporation, the amount of the award shall be a judgment against said corporation, and may be collected as other judgments in said court are by law collectible.

See Laws, 1902, c. 241.

**Sec. 109. Consolidated corporation authorized to issue bonds and mortgage property. Proviso.** When two or more corporations are merged or consolidated the consolidated corporation shall have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make or obligations it will be required to assume, in order to effect such merger or consolidation; to secure the payment of which bonds or obligations it shall be lawful to mortgage its corporate franchises, rights, privileges, and property, real, personal and mixed; provided, such bonds shall not bear a greater rate of interest than six per centum per annum; the consolidated corporation may purchase, acquire, hold and dispose of the stocks of other corporations of this state or elsewhere and exercise in respect thereto all the powers of stockholders thereof, and may issue capital stock, either common or preferred, or both, to such an amount as may be necessary, to the stockholders of such merging or consolidating corporations in exchange or payment for their original shares, in the manner and on the terms specified in the agreement of merger or consolidation; which may fix the amount and provide for the issue of preferred stock based on the property or stock of the merging or consolidating corporations conveyed to the consolidated corporation, as well as upon money capital paid in.

## XII. Taxation.

**Sec. 110. Real and personal property; how taxed. Proviso.** All real and personal property of every corporation shall be taxed the same as the real and personal property of an individual; provided, that this action shall not apply to railway, turnpike, insurance, canal, or banking corporations, or to savings banks, or to cemeteries, church property, or purely charitable or educational associations.

All mortgages which, under the laws of this state, are exempt from taxation when owned by natural persons, shall be and are hereby declared to be, to the same extent, exempt from taxation when owned by corporations of this state, and the value thereof shall be deducted from the value of the capital stock and property of such corporations in ascertaining the net amount of capital stock and property thereof subject to taxation; provided, however, that nothing in this act shall be construed as in any wise affecting or reducing any franchise tax. Laws, 1902, c. 159.

## XIII. Lost certificates of stock.

**Sec. 111. New certificates of stock may be issued for certificates lost or destroyed.** Every corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the directors authorizing such issue of a new certificate may, in their discretion, require the owner of the lost or destroyed certificate, or his legal representatives, to give the corporation a bond, in such sum as they may direct, as indemnity against any claim that may be made against such corporation; a new certificate may be issued without requiring any bond when, in the judgment of the directors, it is proper so to do.

**Sec. 112. Proceedings in case of refusal to issue new certificate of stock.** Whenever any corporation shall have refused to issue a new certificate of stock in place of one theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost or destroyed, the owner of the lost or destroyed certificate, or his legal representatives, may apply to the circuit court of the county in which the principal office of the corporation is located for an order requiring

the corporation to show cause why it should not be required to issue a new certificate of stock in place of the one so lost or destroyed; such application shall be by petition, duly verified, in which shall be stated the name of the corporation, the number and date of the certificate, if known or ascertainable by the petitioner, the number of shares of stock named therein and to whom issued, and a statement of the circumstances attending such loss or destruction; thereupon said court shall make an order requiring the corporation to show cause, at a time and place therein mentioned, why it should not be required to issue a new certificate of stock in place of the one described in the petition; a copy of the petition and order shall be served upon the president or other head officer of the corporation, or on the cashier, secretary, or treasurer thereof, personally, at least ten days before the time designated in the order.

**Sec. 113. Court may proceed in summary manner. May make order to issue stock. Petitioner to file bond.** At the time and place specified in the order, and on proof of due service thereof, the court shall proceed in a summary manner and in such mode as it may deem advisable to hear the proof and allegations offered in behalf of the petitioner, or the corporation, or other interested party, relative to the subject-matter of inquiry, and if upon such inquiry the court shall be satisfied that the petitioner is the lawful owner of the number of shares of the capital stock, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed and cannot, after due diligence, be found, and that no sufficient cause has been shown why a new certificate should not be issued in place thereof, it shall make an order requiring the corporation or other party, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares of the capital stock of the corporation, which shall be specified in the order as owned by the petitioner, and the certificate for which shall have been lost or destroyed; in making the order the court shall direct that the petitioner deposit such security, or file such bond in such form and with such security as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter appear to be the lawful owner of such certificate stated to be lost or stolen; and the court may also direct publication of such notice, either preceding or succeeding the making of such final order, as it shall deem proper; any person who shall thereafter claim any rights under the certificate so lost or destroyed, shall have recourse to said indemnity, and the corporation shall be discharged from all liability to such person by reason of compliance with the order; and obedience to said order may be enforced by the court by attachment against the officers of the corporation, on proof of their refusal to comply with the same.

#### **XIV. Fees on filing certificates: sundry provisions.**

**Sec. 114. Fees on filing certificates. Proviso.** On filing any certificate or other paper, relative to corporations, in the office of the secretary of state, the following fees and taxes shall be paid to the secretary of state, for the use of the state: for certificate of incorporation, twenty cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than twenty-five dollars; increase of capital stock, twenty cents for each thousand dollars of the total increase authorized, but in no case less than twenty dollars; consolidation and merger of corporations, twenty cents for each thousand dollars of capital authorized, beyond the total authorized capital of the corporations merged or consolidated, but in no case less than twenty dollars; extension or renewal of corporate existence of any corporation, the same as required for the original certificate of organization by this act; dissolution of corporation, change of name, change of nature of business, amended certificates of organization (other than those authorizing increase of capital stock), decrease of capital stock, increase or decrease of par value or number of shares, twenty dollars; for filing list of officers and directors, one dollar; filing copy of charter and statement of foreign corporation and issuing certificate of authority to transact business, ten dollars; and for all certificates not hereby provided for, five dollars; provided, that no fees shall be required to be paid by any religious or charitable society or association, or educational association having no capital stock.

**Sec. 115. Surviving incorporators may designate others for organization. Organization effectual in law.** When one or more of the commissioners or incorpo-

rators of any corporation, created by or under any general or special act, shall have died before the corporation shall have been organized, pursuant to law, the survivors or survivor may in writing designate other persons who may take the place and act instead of those deceased, in the organization; and the organization so effected by their aid shall be as effectual in law as if it had been effected by all the original commissioners or incorporators.

**Sec. 116. Mutual association may create capital stock.** The members of any mutual association heretofore or hereafter incorporated, may provide for and create a capital stock of such corporation, upon the consent in writing of all the members of corporation, and may provide for the payment of such stock, and fix and prescribe the rights and privileges of the stockholders therein.

**Sec. 117. Secretary of state to compile and publish list of corporations.** The secretary of state shall annually compile from the records of his office, and publish a complete list, in alphabetical order, of the original and amended certificates of incorporation filed during the preceding year, together with the location of the principal office of each in this state, the name of the agent in charge thereof, the amount of the authorized capital stock, the amount with which business is to be commenced, the date of filing the certificate and the period for which the corporation is to continue.

**Sec. 118. Repealer; vested rights not impaired.** The act entitled "An act concerning corporations" (Revision), approved April seventh, one thousand eight hundred and seventy-five, and all acts amendatory thereof and supplemental thereto, except so far as herein expressly re-enacted, are hereby repealed; but no existing corporation shall be thereby dissolved, nor shall the powers specified in its charter or certificate of incorporation be thereby impaired or limited, and vested rights acquired under the repealed acts and actually exercised and enjoyed shall not be divested or disturbed, but no special provision relating to taxation, or immunity or exemption therefrom, contained in any special charter, shall be revived or continued by anything in this act; all acts and parts of acts, general and special, inconsistent with this act are hereby repealed; but this repealer shall not revive any act heretofore repealed.

**Sec. 119. Corporations may extend corporate existence.** Any corporation, created by special charter, or under a general law, for any objects which are allowed by this act, may extend its corporate existence in the manner prescribed in the twenty-seventh section of this act; provided, that if such corporation possesses franchises, powers, privileges, immunities or advantages which could not be obtained under this act, such extension shall not continue, renew or extend such franchises, powers, privileges, immunities or advantages, but the filing of the certificate of extension shall operate as a waiver and abandonment of such franchises, powers, privileges, and advantages.

See Laws, 1902, c. 196.

## **Laws, 1897, c. 50. A Supplement to an Act entitled "An Act concerning Corporations," (Revision, 1896), approved April 21, 1896.**

**Sec. 1. Personal liability of members or officers of domestic corporation; when proceedings against not maintainable.** No action or proceeding shall be maintained in any court of this state against any stockholder, officer, or director of any domestic corporation for the purpose of enforcing any statutory personal liability of such stockholder, officer, or director for or upon any debt, default, or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of any other state or foreign country.

**Sec. 2. Domestic or foreign corporation.** No action or proceeding shall be maintained in any court of law of this state against any stockholder, officer, or director of any domestic or foreign corporation by or on behalf of any creditor of such corporation to enforce any statutory personal liability of such stockholder, officer, or director for or upon any debt, default, or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of any other state or foreign country, and no pending or future action or proceeding to enforce any such

statutory personal liability shall be maintained in any court of this state other than in a nature of an equitable accounting for the proportionate benefit of all parties interested, to which such corporation and its legal representatives, if any, and all of its creditors and all of its stockholders shall be necessary parties.

**Laws, 1897, c. 85. A Supplement to "An Act concerning Corporations," approved April 21, 1896.**

**Sec. 1. Corporations may change location of office. Proviso.** The board of directors of any corporation, organized under the laws of this state, may change the location of the principal office of such corporation within this state to any other place within this state by resolution adopted at a regular or special meeting of such board, by the votes of at least two-thirds of the members of such board; provided, that no certificate shall be required to be filed of the removal of any office from one point to another in the same town, township, or city in this state.

**Sec. 2. Copy of resolution to be filed in office of secretary of state.** Upon the adoption of a resolution as aforesaid, a copy thereof shall be filed in the office of the secretary of state, signed by the president and secretary of such corporation, and sealed with its corporate seal; for filing the said certificate, the secretary of state shall charge a fee of five dollars.

**Laws, 1897, c. 127. An Act concerning the Sale of the Property and Franchises of any Corporation created by or under any Law or Laws of this State, except Steam-Railroad, Canal, Turnpike, or Plank-Road Companies.**

**Sec. 1. Property and franchises of certain corporations sold by order of court, to be vested in purchasers, with all rights. Purchasers to become a new body politic. Rights, etc.** Whenever the property and franchises of any corporation created by or under any law or laws of this state, except steam-railroad, canal, turnpike, or plank-road companies, shall be sold and conveyed under or by virtue of any decree or decrees of the court of the United States in and for the district of New Jersey, sitting in equity, and an execution or executions issued thereon, to satisfy any mortgage debt or debts, judgment or judgments, or other incumbrance or incumbrances thereon, such sale and conveyance, duly made and executed, shall vest in the purchaser or purchasers thereof all the right, title, interest, property, possession, claim, and demand, in law and equity, of the parties to the suit or suits, action or actions, in which such decree or decrees was or were made, of, in and to the said property so sold with its appurtenances; and also of, in and to the corporate rights, liberties, privileges, and franchises of the said corporation, but subject to all the conditions, limitations, restrictions, and penalties of the said corporation of and concerning the same; and such purchaser or purchasers, and his or their associates, not less than three in number, shall thereupon become a new body politic and corporate in fact and in law, by such name as said persons shall select, and shall be deemed and considered the stockholders of the capital stock of such new body politic and corporate, in the ratio and according to the amount of the purchase-money by them respectively contributed; and shall be entitled to all the rights, liberties, privileges, and franchises, and be subject to all conditions, limitations, restrictions, and penalties of and concerning the said corporation whose property and franchises shall have been so sold and conveyed, which were contained in the act or acts creating, or under which the aforesaid corporation was created, and the supplements thereto, so far as the same was or were in force and unrepealed at the time of such sale and conveyance.

**Sec. 2. Purchasers to meet and organize new corporation.** The persons for or on whose account any such property and franchises may have been purchased, shall meet within thirty days after the conveyance made by virtue of said process or decree shall have been delivered, at the county town or the county wherein said sale may have been made, written notice of the time and place of said meeting having been given to each of said several persons at least ten days before said meeting, and

organize said new corporation by electing a president and board of directors to continue in office until the first Monday of May succeeding such meeting, when, and annually thereafter on the said day a like election for a president and directors shall be held to serve for one year.

**Sec. 3. Adopt name and seal and fix capital stock.** At such meeting so held, the said person shall adopt a corporate name and corporate seal, determine the amount of the capital stock of said corporation, and shall have power and authority to make and issue certificates of stock in shares of fifty dollars each.

**Sec. 4. May issue preferred stock.** The said corporation may then, or at any time thereafter, create and issue preferred stock to such an amount and at such times as they may deem necessary.

**Sec. 5. May borrow money and provide for repayment.** Any corporation created under this act may borrow from time to time such sum or sums of money as may be necessary for the accomplishment of the object of such corporation, not exceeding at any one time the total amount of the authorized capital stock of such corporation, or any increase thereof, and to secure the repayment thereof, or of any part or portion thereof, may issue bonds registered or with coupons or interest certificates thereto attached, or both, secured by a mortgage of any or all of its franchises, real estate or personal property, including stocks and securities of such corporation or of any other corporation whose stocks or securities it owns, which mortgage may be recorded as mortgages of real estate are or hereafter may be by law required to be recorded in the office of the clerk or register of deeds of the county or counties in which the property of said corporation described in said mortgage may be located, and in the office of the clerk or register of deeds of the county in which the principal office of such corporation is situate, and such record or the lodgment of such mortgage in such clerk's or register's office for record shall have the same force, operation, and effect as to all judgment creditors, purchasers, or mortgagees in good faith, as the record or lodgment for that purpose of mortgages of real estate now have, although such mortgage may not have been executed, proved or recorded as a chattel mortgage.

**Sec. 6. Not to plead statute against usury.** No corporation or corporations issuing bonds under the provisions of this act shall plead any statute or statutes against usury in any court of law or equity in any suit instituted to enforce the payment of such bonds or mortgages.

**Sec. 7. Certificate to be filed in office of secretary of state. Proviso.** It shall be the duty of such new corporation, within one month after its organization, to make a certificate thereof, under its common seal, attested by the signature of its president, specifying the date of such organization, the name so adopted, the amount of capital stock, and the name of its president and directors, and transmit the said certificate to the secretary of state, at Trenton, to be filed in his office and there remain of record; and a certified copy of such certificate so filed shall be evidence of the corporate existence of said new corporation; provided, that nothing contained in this act shall divest or in any manner impair the lien of any prior mortgage or other incumbrance upon the property or franchises conveyed under the sale of said property or franchises, when by the terms of the process or decree under which the sale has been made, or by operation of law, the said sale is made subject to the lien of any such prior mortgage or other incumbrance; and provided, that no such sale and conveyance or organization of such new corporation shall in any wise affect or impair any right or rights in law or equity of any person or persons, body politic or corporate, not a party or parties to the suit or suits, action or actions, in which the aforesaid decree or decrees was or were made, nor of the said party or parties, except so far forth as determined by said decree or decrees; and provided also, that when any trustee or trustees shall be made a party or parties to such suit or suits, action or actions, and their cestuis que trust, for any reason or reasons satisfactory to the court in which suit or suits, action or actions, may be, shall not be made a party or parties thereto, the rights and interests of such cestuis que trust shall be concluded by such decree or decrees.

---

**Laws, 1897, c. 155. A Supplement to "An Act concerning Corporations" (Revision of 1896), approved April 21, 1896.**

**Sec. 1. Certain words not to be used as part of name of corporation.** No corporation shall hereafter be organized under the provisions of "an Act concerning corporations" (Revision of 1896), approved April twenty-first, one thousand eight hundred and ninety-six, or any amendment thereof or supplement thereto, with the words "insurance," or "safe deposit," or "trust company," or "bank" as a part of its name, and no certificate of incorporation shall be hereafter received for filing or record or be filed or recorded in any office in this state for the purpose of effectuating its incorporation.

**Sec. 2. Corporation already organized not to incorporate certain words as part of name.** No corporation heretofore organized or doing business under the aforesaid act shall, by change or amendment of its name, use the words "insurance" or "safe deposit" or "trust company" or "bank" or any of them as part of its name, and no certificate of change or amendment shall be hereafter received for filing or record or be filed or recorded in any office in this state for the purpose of effectuating such change.

**Sec. 3. Not to apply to corporations heretofore formed.** Nothing herein contained shall, however, be construed to apply to or affect the name of any corporation whose certificate of incorporation has heretofore been filed with the secretary of this state.

**Laws, 1898, c. 172. A Supplement to an Act entitled "An Act concerning Corporations" (Revision of 1896), approved April 21, 1896.**

**Sec. 1. Amended certificate may be filed. Proviso. Fees.** It shall be lawful for the incorporators of any corporation, before the payment of any part of its capital, to record with the clerk of the county in which its original certificate of incorporation was recorded and file with the secretary of state, an amended certificate duly signed by the incorporators named in the original certificate of incorporation, and duly acknowledged or proved as required for certificates of incorporation under the act to which this is a supplement, modifying, changing or altering its original certificate of incorporation, in whole or in part, which amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been filed and recorded on the date of the filing and recording of the original certificate; provided, however, that nothing herein shall permit the insertion of any matter not in conformity with the act to which this is a supplement; and provided, however, that this act shall not in any manner affect any proceedings pending in any court; for filing said amended certificate of incorporation, the secretary of state shall charge a fee of twenty dollars; provided, that where the total authorized capital stock of the corporation is increased by said amended certificate the secretary of state shall charge an additional fee of twenty cents for each one thousand dollars of said increase.

[Sec. 2—4. Amend principal act.]

**Laws, 1898, c. 173. A Supplement to an Act entitled "An Act concerning Corporations" (Revision of 1896), approved April 21, 1896.**

**Sec. 1. Requirements contained in certificate.** Every certificate, report, or statement now or hereafter required by any law of this state to be made to any officer or department of this state, or to be published, filed, or recorded by any corporation, domestic or foreign, shall, in addition to the other matter required by law, set forth the location (town or city, street and number, if number there be) of its principal office in this state, and the name of the agent therein and in charge thereof, and upon whom process against the corporation may be served. No certificate, statement, or report shall hereafter be received, filed, or recorded by any officer or in any office of this state unless the same shall comply with the foregoing

provisions. Such office of any domestic corporation so registered shall be and be deemed the office and post-office address of such domestic corporation, its officers, directors, and stockholders, and whenever by the provisions of any law of this state any notice is required to be given to the corporation, its officers, stockholders, or directors, such notice shall be sent by mail or otherwise, as the law may require, to such registered office, and such notice so given shall be and be deemed sufficient notice. Whenever by any law of this state in any such certificate, report or statement, the residence or post-office address of any incorporator, stockholder, director, or other officer is required to be set forth or given, it shall be and be deemed a full compliance with such provision to give as such post-office address, the post-office address of the registered office of the company within this state.

### **Laws, 1899, c. 66. Supplement to an Act entitled "An Act concerning Corporations" (Revision of 1896).**

**Sec. 1. Correction of errors in incorporating. Method.** Whenever, in the certificate of incorporation or organization of any corporation organized under any general act of the legislature of this state, there shall be any error or omission in the recital of the act under which said corporation is created, or in the omission of any other matter which is required to be stated in said certificate, it shall and may be lawful for said corporation to correct such error in the manner following: The board of directors of such corporation shall pass a resolution declaring that such error exists and that said corporation desires to correct the same, and shall call a meeting of the stockholders of said corporation to take action upon such resolution; the meeting of said stockholders shall be held upon such notice as the by-laws provide, and in the absence of such provision, then upon ten days' notice given personally or by mail; if two-thirds in interest of all the stockholders shall vote in favor of the correction of such error or omission, a certificate of such action shall be made and signed by the president and secretary under the corporate seal; which said certificate shall be acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two-thirds in interest of all the stockholders of said corporation, shall be filed in the office of the secretary of state, and upon the filing thereof, the certificate of incorporation or of organization shall be deemed to be corrected and amended accordingly, and the filing of said certificate in conformity with this act shall have the same force and effect as if said certificate of incorporation or organization had been originally drafted in conformity with the amendment so made.

### **Laws, 1899, c. 150. An Act concerning Corporations.**

**Sec. 1. Certain corporate property may be leased. Proviso.** Any corporation of this state, except railroad and canal corporations, may hereafter, with the assent of two-thirds in interest of its stockholders, either in person or by proxy, lease its property and franchises to any corporation, and every corporation of this state is hereby authorized to take the lease or any assignment thereof, for such terms and upon such conditions as may be agreed upon, and that any such lease or assignment, or both, heretofore made, are hereby validated; provided, however, that nothing herein contained shall be construed to authorize any corporation which is now specifically prohibited by law or by its certificate of incorporation from leasing its property or franchises to do so, nor to authorize the leasing by any corporation without the consent of the legislature, when such consent is now specially required by any law of this state.

### **Laws, 1899, c. 213. A Supplement to an Act entitled "An Act concerning Corporations" (Revision of 1896), approved April 21, 1896.**

**Sec. 1. Petition to chancellor to inquire into election of directors.** Any person who may be aggrieved by or complain of any election for directors, or any proceeding, act, or matter in or touching the same, may make application by petition to the

chancellor, who, after requiring reasonable notice to be given to the adverse party or to those who are to be affected thereby, shall proceed forthwith and in a summary way to hear the affidavits, proofs, and allegations of the parties, or otherwise inquire into the matter or causes of complaint, and thereupon establish the election so complained of, or order a new election, or make such order and give such relief in the premises as right and justice may require.

**Sec. 2. Pending hearing, persons claiming election restrained.** Pending the hearing and determination of any application to investigate an election of directors the chancellor may by order restrain the persons claiming to have been elected to the office of director from exercising any of the functions or duties of the office.

**Laws, 1900, c. 126. Supplement to "An Act concerning Corporations," approved April 21, 1896.**

**Sec. 1. Relative to dissolution of corporations.** Hereafter no corporation organized under any law of this state shall be dissolved by its stockholders until all taxes levied upon or assessed against such corporation by the state of New Jersey in accordance with the provisions of an act entitled "An act to provide for the imposition of state taxes upon certain corporations and for the collection thereof," approved April eighteenth, one thousand eight hundred and eighty-four, and all acts amendatory thereof or supplementary thereto, shall have been fully paid, and a certificate to that effect, signed by the comptroller of the treasury, shall have been annexed to and filed with the certificate of dissolution.

**Laws, 1900, c. 172. An Act to provide in Terms for Cumulative Voting in Corporations issuing or authorized to issue Shares of Capital Stock.**

**Sec. 1. Cumulative voting.** The certificate of incorporation, original or amended, of any corporation now or hereafter organized under the laws of this state and thereunder issuing or authorized to issue shares of its capital stock, may provide that at all elections of directors, managers, or trustees, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors, managers, or trustees to be elected and that he may cast all of such votes for a single director, manager, or trustee or may distribute them among the number to be voted for, or any two or more of them as he may see fit, which right, when exercised, shall be termed cumulative voting.

**Sec. 2. Act, how construed.** This act shall not be construed as affecting in anywise the determination of whether or not the right of cumulative voting has been heretofore granted by implication or the right of cumulative voting, if any, granted specifically by special charter or certificate of incorporation.

**Laws, 1902, c. 58. An Act to amend an Act entitled "An Act concerning Corporations" (Revision of 1896), approved April 21, 1896.**

[Sec. 1. Amends principal act.]

**Sec. 2. Retirement of preferred stock by issue of bonds. Bonds may be converted into common stock.** With the consent of two-thirds in interest of each class of the stockholders present in person or by proxy at a meeting called in the manner provided in section twenty-seven, every corporation organized under this act that shall have issued preferred stock, entitling the holders thereof to receive dividends at a rate exceeding five per centum per annum, and that shall have continuously declared and paid dividends at such rate, on such preferred stock for the period of at least one year next preceding the meeting, and whose floating or unfunded debt at the time of the stockholders' meeting shall, in the certificate thereof filed with the secretary of state, be certified not to exceed ten per centum of the par amount of the preferred stock then outstanding, and whose assets at such time, after deducting the amount of its indebtedness, shall be certified in the judgment of the officers making such certificate to be at least equal to the amount of preferred stock issued and outstanding, may, with the consent of the holder of any such preferred stock,



redeem and retire the preferred stock of such holder, out of bonds or out of the proceeds of bonds of the corporation, bearing interest at a rate not exceeding five per centum per annum, the principal of such bonds being made payable at a date not less than ten years from the date thereof; every corporation organized under this act may, from time to time, in the manner above provided, issue bonds, which, if therein so declared, shall be convertible at par at the option of the holder, into fully-paid common stock of the corporation at par, within any period therein prescribed not less than two years from the issue thereof; and in such case the board of directors may authorize the issue of the common stock into which such bonds, by their terms, shall be convertible.

### **Laws, 1902, c. 144. An Act relating to Usury.**

**Sec. 1. Corporations may not plead usury.** No corporation shall hereafter plead or set up the defense of usury to any action brought against it to recover damages or enforce a remedy on any obligation executed by said corporation; provided, that this act shall not apply to any such action which is now pending.

See also Laws, 1897, c. 127, sec. 6.

### **Laws, 1902, c. 196. An Act concerning the Extension, Renewal, and Continuance of the Existence of Corporations organized under the Laws of this State.**

**Sec. 1. Manner of extending, etc., corporate existence.** The corporate existence of any corporation heretofore or hereafter created under or by virtue of any law of this state or of the successor of any such corporation may be extended, renewed, and continued in the manner following: a meeting of the stockholders shall be called by a notice stating the object of the meeting signed by the holders of at least one-third in value of the outstanding capital stock of the company, which notice must be given personally or by mail to each stockholder at least ten days before the day of said meeting; if two-thirds in interest of each class of stockholders having voting powers shall vote in favor of such extension, renewal, and continuation of corporate existence, a certificate thereof shall be signed by the presiding officer and secretary of said meeting, acknowledged, or proved as in the case of deeds of real estate, and such certificate, together with the written assent in person or by proxy of two-thirds in interest of each class of such stockholders, shall be filed in the office of the secretary of state, and the certificate of the secretary of state that such certificate and assent has been filed in his office shall be taken and accepted as evidence of the extension, renewal, and continuation of its corporate existence in all courts and places.

**Sec. 2. Certificate filed, fees, privileges.** Upon making and filing such certificate and paying the fees now imposed or hereafter to be imposed upon corporations for certificates of incorporation, the period of existence of such corporation shall be extended as declared in such certificate; but the extension shall not be held to invest such corporation with any exclusive privileges, or exempt it from the operation of any general laws hereafter passed relating to the same class of corporations, or prevent the legislature from making applicable thereto any general law now in force relating to such class.

**Sec. 3. Rights reserved to state.** Nothing herein contained shall be construed to interfere with the right of the state of New Jersey, reserved by any law now or hereafter existing, to acquire the property and franchises of any such corporation, or at any time to abolish or repeal, alter or amend the charter of the same, nor shall this act be construed to continue any irrevocable or other contract with the state contained in any charter beyond the time originally fixed for its expiration.

**Sec. 4. As to taxation.** Nothing herein contained shall be construed as continuing in force and operation any special provision relating to taxation, or exemption therefrom, in the charter of any corporation whose corporate existence may have been or hereafter shall be extended, renewed, and continued in conformity with the terms of this act; but each corporation whose corporate existence may have been or shall be extended, renewed, and continued as authorized hereby shall

be assessed for taxes in accordance with the provisions of the general law of this state relating to the taxation of corporations.

**Sec. 5. Affidavit required.** No corporation shall have the right to proceed under the provisions of this act unless it shall file with the certificate and written assent provided for in section one hereof an affidavit of the presiding officer and secretary of said meeting that it is at the time either actually engaged in, or has provided for, the conduct of the business for which it was incorporated; and in all cases where the charter of a corporation may have expired by limitation of time within four years next preceding the date when such corporation shall file the certificate herein mentioned, said corporation shall have the benefit of the right to proceed under the provisions of this act, and upon complying with the conditions set forth in this act the existence of such corporation shall be renewed, extended, and continued as declared in said certificate with the same effect and force as if the certificate, written assent and affidavit provided for herein had been filed prior to the expiration of such charter period, and as fully as if said period of extension had been named in the original charter or certificate of organization of such corporation.

**Sec. 6. Application of act.** The provisions of this act shall not apply to any savings bank, a building and loan association, an insurance company, a surety company, a railroad company, a street railroad company, a telegraph company, a telephone company, a gas company, an electric light company, a turnpike company, a plank road company, or any company which possesses the right of taking and condemning lands in this state.

### **Laws, 1902, c. 241. A Supplement to an Act entitled "An Act concerning Corporations" (Revision of 1896), approved April 26, 1896.**

**Sec. 1. Proceedings in case of dissenting stockholders.** Upon the merger or consolidation of any two or more corporations, which do not have the right to exercise any franchise for public use, into a single corporation, as provided by the act to which this act is a supplement, if any stockholder in any of said merging or consolidating corporations not voting in favor of such agreement of merger or consolidation, shall dissent therefrom and shall refuse or neglect to convert his stock into the stock of such consolidated corporation, or to dispose thereof in the manner and on the terms specified in such agreement, such dissenting stockholder may, at any time within thirty days after the adoption and filing of the agreement of consolidation, apply by petition to the circuit court of the county in which the chief office of the corporation, whose stockholder shall so dissent or neglect, was or is located, on reasonable notice to be prescribed by said court to said consolidated corporation for the appointment of three disinterested appraisers to appraise the full market value of his stock without regard to any depreciation or appreciation thereof in consequence of the said merger or consolidation; and thereafter the proceedings and the rights and remedies of the respective parties shall be the same as is provided in the act to which this act is a supplement in the case of the appointment of appraisers to appraise the market value of stock of dissenting stockholders of corporations enjoying the right to exercise any franchise for public use; and the judgment upon the award as provided for therein, shall be a judgment against said consolidated corporation, and shall be a lien on all the property and assets acquired by the consolidated corporation from the corporation so merged, subject only to such liens as existed against said property and assets at the time of such merger or consolidation.

**Sec. 2. Act not to limit or repeal.** Nothing herein shall in anywise limit, repeal, or supersede the provisions of the one hundred and eighth section of the act to which this a supplement.

### **Laws, 1903, c. 149. An Act relative to Corporations.**

**Sec. 1. Certificates, reports, etc., to be in English language.** Every certificate of incorporation including the corporate name or title, every amended or supplemental certificate, and every report, statement, or other paper relative to or affecting corporations, domestic or foreign, now or hereafter required by any law of this state

to be made to any officer, or recorded or filed in any office of this state, shall be in the English language; no certificate, statement, report, or paper relative to or affecting corporations, shall hereafter be received, recorded, or filed by any officer or in any office of this state unless the same shall comply with the foregoing provisions.

**Laws, 1903, c. 226. Supplement to "An Act concerning Corporations," approved April 21, 1896.**

**Sec. 1. Existence of corporation assumed.** In every suit or judicial proceeding in this state, to which a corporation is a party, the existence of such corporation shall be taken to be admitted, unless it is put in issue by the pleadings; and in courts in which the practice is that the defendant need not file a plea, the existence of such corporation shall be taken to be admitted unless the party to the suit denying the existence of such corporation shall file with the court an affidavit stating that to the best of his or its knowledge and belief such corporation does not exist.

**Laws, 1904, c. 148. An Act respecting the Recording of Certificates and other Papers relating to and affecting Corporations.**

**Sec. 1. Preservation of records of corporations.** It shall be the duty of the secretary of state to record in books for that purpose, all certificates and other papers relating to and in any way affecting corporations, now on file in his office and such as are required by any law of this state to be filed therein, excepting annual reports; such recording to be done upon typewriter with record ribbon of permanent color, on paper of approved durability; such records to be kept in a vault separate and away from the vault or place wherein the originals are filed; for this service the secretary of state shall, at the time of the filing of each certificate or other paper, charge a fee of ten cents per folio of one hundred words (with a minimum charge of one dollar), for the use of the state.

**Laws, 1905, c. 5. A Supplement to "An Act to prescribe the Notice to be given of Application to the Legislature for Laws, when Notice is required by the Constitution," approved January 26, 1876.**

**Sec. 1. Giving notice of intention to repeal charter.** Of the intention to apply for the passage of a bill to repeal the charter of any corporation, or bill to repeal the charter and dispose of the property of any corporation, the public notice required by the first section of the act to which this is a supplement shall be given by publishing the same, in a daily newspaper published in Trenton, for at least six consecutive days prior to the introduction of such bill, and by serving a copy of the notice upon the president or secretary or a director or registered agent of the corporation, if such officer or agent can be found within this state, and if none of them can be found then by personal service of such copy upon them or one of them out of this state, or by mailing a copy to them or one of them, directed to the residence or post-office address of such officer or agent, if known.

**Laws, 1905, c. 257. Supplement to "An Act for the Punishment of Crimes" (Revision of 1898).**

**Sec. 166. Fraudulent objects.** Any person or persons who shall organize or incorporate, or procure to be organized or incorporated, any corporation or body corporate under the laws of this state, with intent thereby to further, promote, or conduct any fraudulent or unlawful object, shall be guilty of a misdemeanor. Any person or persons who, being officers, directors, managers, or employes of any corporation or body politic incorporated under the laws of this state, shall wilfully use, operate, or control said corporation or body corporate for the furtherance or promotion of any fraudulent or unlawful object, shall be guilty of a misdemeanor.

**Laws, 1907, c. 42.** A Supplement to an Act entitled "An Act respecting the Court of Chancery" (Revision of 1902), approved April 3, 1902.

**Sec. 1. Service upon corporations.** In any suit or proceeding heretofore or hereafter begun in the court of chancery against a corporation of this state, process of subpoena or other writ, notice, orders, and papers of any nature whatsoever in such suit or proceedings served upon the president, vice president, a director or the designated agent of the corporation or other officer thereof, shall be good and effective service upon the corporation.

**Laws, 1908, c. 116.** An Act to amend an Act entitled "An Act concerning District Courts" (Revision of 1898), approved June 14, 1898.

**Sec. 1. Service of summons on corporations.** If the defendant be a domestic corporation, the summons shall be served on the president, or head officer, or agent in charge of its principal office, or any employee or clerk employed in any of its offices in the county, or left at his or her dwelling-house or usual place of abode, at least five days before its return. If the defendant be a foreign corporation, the summons shall be served upon any officer, director, agent, or clerk, or engineer of such corporation, either personally or by leaving a copy thereof at his dwelling-house or usual place of abode in such county, or by leaving a copy at the office, depot, or usual place of business of such foreign corporation in such county, at least five days before its return.

Where the defendant is a corporation, service (of the declaration) may be made by delivering the same to the president or other head officer, or to the secretary or clerk thereof, personally, or by leaving the same at his dwelling-house or place of abode; and the plaintiff, if he shall be entitled to costs in the cause, shall be allowed for such service the sum of two dollars for each defendant so served, not exceeding three, and the same to be included in the taxed bill of costs. Gen. St., p. 2551, sec. 106.

## **New York.**

### **Constitution.**

#### **Article III.**

**Sec. 18. Cases in which private and local bills shall not be passed, etc.** The Legislature shall not pass a private or local bill in any of the following cases:

.....  
Granting to any private corporation, association or individual any exclusive privilege, immunity, or franchise whatever ...  
.....

#### **Article VIII.**

**Sec. 1. Formation of corporations.** Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.

**Sec. 2. Dues of corporations.** Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

**Sec. 3. Corporations, definition of term.** The term corporations as used in this article shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons ...

**Sec. 9. Credit or money of the state not to be given.** Neither the credit nor the money of the state shall be given or loaned to, or in aid of any association, corporation, or private undertaking ...

## **Business Corporations Law.**

**Cons. Laws, 1909, c. 12. An Act in relation to Business Corporations, constituting Chapter four of the Consolidated Laws.**

### **Article I. Short title.**

**Sec. 1. Short title.** This chapter shall be known as the "Business Corporations Law."

### **Article II. General provisions.**

**Sec. 2. Incorporation.** Except as provided in section two-a of this chapter, three or more persons may become a stock corporation for any lawful business purpose or purposes other than a moneyed corporation, or a corporation provided for by the banking, the insurance, the railroad, and the transportation corporations laws, or an educational institution or corporation which may be incorporated as provided in the education law, by making, signing, acknowledging, and filing a certificate which shall contain: 1. The name of the proposed corporation; 2. The purpose or purposes for which it is to be formed; 3. The amount of the capital stock, and if any portion be preferred stock, the preferences thereof; 4. The number of shares of which the capital stock shall consist, each of which shall not be less than five nor more than one hundred dollars, and the amount of capital not less than five hundred dollars, with which said corporation will begin business; 5. The city, village, or town in which its principal business office is to be located. If it is to be located in the city of New York, the borough therein in which it is to be located. 6. Its duration; 7. The number of its directors, not less than three; 8. The names and post-office addresses of the directors for the first year; 9. The names and post-office addresses of the subscribers to the certificate, and a statement of the number of shares of stock which each agrees to take in the corporation.

Any certificate of incorporation filed, prior to April twenty-second, eighteen hundred and ninety-six, under the provisions of the business corporations law theretofore in force which shall contain the names and post-office addresses, either of the subscribers to the stock or of the subscribers to the certificate, and a statement of the number of shares of stock which each agrees to take in the corporation, shall be deemed to have complied with the requirements of section two, subdivision nine of said law.

If meetings of the board of directors are to be held only within the state the certificate or by-laws must so provide.

**Sec. 2 a. Incorporating for the purpose of conducting law business, etc., prohibited.** No corporation shall be organized or created under the provisions of this chapter for the purpose or purposes of conducting any branch of the practice of law or of retaining or employing an attorney or attorneys to furnish legal advice, draw legal papers, or perform legal services of any kind or description, either directly for the person, persons, or corporation for whose use such services are rendered, or for the corporation retaining such attorney in compliance with any contract of employment of the corporation or of the attorney made by the corporation with any other person, persons, or corporation. The statement of the purpose or purposes of a corporation, in any certificate filed under the provisions of this chapter, in whatsoever language the same may be set forth, shall not be held or construed to confer on the corporation the power to transact any business specified in this section as a purpose for which the creation of a corporation under this chapter is prohibited; and particularly when the stated objects of a corporation include the collection of debts or accounts, in words or substance, they shall not be construed to include the employment of furnishing of attorneys to prosecute any action or pursue any legal or equitable remedy in aid of such collections.

**Sec. 3. Restrictions upon commencement of business.** No such corporation shall incur any debts until the amount of capital specified in its certificate of incorporation, as the amount of capital with which it will begin business, shall have been paid in in money or property.

**Sec. 4. Reorganization of existing corporations.** Any stock corporation heretofore organized, except a moneyed or transportation corporation, or a corporation the business of which partakes of the nature of banking or insurance, may

reincorporate under this chapter in the following manner: The directors of the corporation shall call a meeting of the stockholders thereof by publishing a notice, stating the time, place, and object of the meeting, signed by at least a majority of them, in a newspaper of the county in which its principal business office is situated, once a week, for at least three successive weeks, and by serving upon each stockholder, at least three weeks before the meeting, a copy of such notice either personally or by depositing it in the post-office, postage prepaid, addressed to him at his last known post-office address. The stockholders shall meet at the time and place specified in the notice and organize by choosing one of the directors chairman, and a suitable secretary, and shall then take a vote of those present in person or by proxy, upon the proposition to reincorporate under this chapter, and if votes representing a majority of all the stock of the corporation shall be cast in favor of the proposition, the officers of the meeting shall execute and acknowledge a certificate of the proceedings, which certificate shall also contain the statements required by section two of this chapter, and shall be filed in the offices where certificates of incorporation under this chapter are required to be filed. From the time of such filing, such corporation shall be deemed to be a corporation organized under this chapter, and if originally organized or incorporated under a general law of this state, it shall have and exercise all such rights and franchises as it has heretofore had and exercised under the laws pursuant to which it was originally incorporated, and such reorganization shall not in any way affect, change, or diminish the existing liabilities of the corporation.

**Sec. 5. Payment of capital stock.** One-half of the capital stock of every such corporation shall be paid in within one year from its incorporation, or the corporation shall be dissolved, and the directors within thirty days after such payment shall make a certificate of the fact of such payment, which shall be signed and acknowledged by a majority of the directors, and verified by the president or vice-president and secretary or treasurer, and filed in the offices where the certificates of incorporation are filed. The dissolution of any such corporation for any cause shall not take away or impair any remedy against it, its stockholders or officers, for any liabilities incurred previous to its dissolution.

**Sec. 6. Full liability corporations.** Every corporation formed under this chapter may be or become a full liability corporation by inserting a statement in the certificate of incorporation, that the corporation thereby formed is intended to be a full liability corporation; and in case of an existing corporation, which is not a full liability corporation, it may become such by filing in the offices where certificates of incorporation are required to be filed, a supplemental certificate stating that thereafter the corporation intends to be a full liability corporation, which certificate shall be executed and acknowledged by the president and treasurer of the corporation or by the board of directors, and shall have annexed thereto a copy of a resolution, adopted by a two-thirds vote of the board of directors, and the written consent of all the stockholders of the corporation, authorizing and consenting to the change of the corporation to a full liability corporation. If the corporation is formed as or becomes a full liability corporation all the stockholders of the corporation shall be severally individually liable to its creditors for all its debts and liabilities, and may be joined as defendants in any action against it. No execution shall issue against any stockholder individually until execution has been issued against the corporation and returned unsatisfied, and all the stockholders shall contribute a proportionate share, according to the number of shares of stock owned by each, of the amount paid by any stockholder on a judgment recovered against him individually for a debt of the corporation, and he may recover from the other stockholders in the corporation in a joint or several action the proper portion due by them and each of them, of the amount paid by him on any such judgment.

**Sec. 7. Consolidation of corporations.** Any two or more corporations organized under the laws of this state for the purpose of carrying on any kind of business of the same or of a similar nature, which a corporation organized under this chapter might carry on, may consolidate such corporations into a single corporation, as follows: The respective corporations may enter into and make an agreement signed by a majority of their respective boards of directors and under their respective corporate seals, for the consolidation of such corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the

new corporation, the number of directors who shall manage its affairs, not less than three, the names and post-office addresses of the directors for the first year, the term of its existence, not exceeding fifty years, the name of the town or towns, county, or counties, in which its operations are to be carried on, the name of the town or city and county in this state in which its principal place of business is to be situated, the amount of its capital stock, which shall not be larger in amount than the fair aggregate value of the property, franchises, and rights of such corporations, and the number of shares into which the same is to be divided, the manner of distributing such capital stock among the holders thereof, and if such corporations, or either of them, shall have been organized for the purpose of carrying on any part of its business in any place out of this state, the agreement shall so state, with such other particulars as they may deem necessary.

**Sec. 8. Submission of consolidation agreement to stockholders.** Such agreement shall be submitted to the stockholders of each of such corporations, at a meeting thereof to be called upon notice of at least two weeks, specifying the time, place and object thereof, and addressed to each at his last known post-office address, and deposited in the post-office, postage prepaid, and published for at least two successive weeks in one of the newspapers in each of the counties in this state in which either of such corporations shall have its place of business, and if such agreement shall be approved at each of such meetings of the respective stockholders separately, by the vote by ballot of the stockholders owning at least two-thirds of the stock, the same shall be the agreement of such corporations, and a sworn copy of the proceedings of such meetings, made by the secretaries thereof, respectively, and attached thereto, shall be presumptive evidence of the holding and action of such meetings. Such agreement and verified copy of proceedings of such meetings shall be made in duplicate, one of which shall be filed in the office of the secretary of state, and the other in the office of the clerk of the county where the principal business office of the new corporation is to be situated in this state, and thereupon such corporations shall be merged into the new corporation specified in such agreement, to be known by the corporate name therein mentioned, and the provisions of such agreement shall be carried into effect as therein provided. If any stockholder, not voting in favor of such agreement to consolidate, shall at such meeting, or within twenty days thereafter, object to such consolidation and demand payment for his stock, such stockholder or such new corporation, if the consolidation takes effect at any time thereafter, may at any time within sixty days after such meeting apply to the supreme court at any special term thereof held in the district in which any county is situated in which such new corporation may have its place of business, upon at least eight days' notice to the new corporation, for the appointment of three persons to appraise the value of such stock, and the court shall appoint three such appraisers and designate the time and place of their first meeting, with such directions in regard to their proceedings as shall be deemed proper, and also direct the manner in which payment for such stock shall be made to such stockholder. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time of such dissent, and deliver one copy to such new corporation, and another to such stockholder if demanded; the charges and expenses of the appraisers shall be paid by the new corporation. When the new corporation shall have paid the amount of such appraisal, as directed by the court, such stockholder shall cease to have any interest in such stock and in the corporate property of such corporation, and such stock may be held or disposed of by such new corporation. Where any consolidation has been heretofore or shall be hereafter effected pursuant to the laws of this state, and the holder of ninety per centum of the capital stock of each of such corporations have voted in favor of such agreement to consolidate, if any stockholder not voting in favor of such consolidation shall fail to exchange his stock for stock of such new corporation within sixty days after this act shall go into effect, or, in case of a consolidation hereafter effected, within sixty days after he shall have become entitled to make such exchange, such new corporation may, at any time thereafter, upon at least eight days' notice to such stockholder, to be given personally, within the state, if possible, and if not, then in such manner as the court, shall direct, apply

to the court as hereinbefore provided, for the appointment of three persons to appraise the value of such stock at the time of the expiration of such sixty days. Upon the completion of the appraisal in the manner hereinbefore provided for, and the payment by such new corporation of the amount of such appraisal, as directed by the court, such stockholder shall cease to have any interest in such stock, and in the corporate property of such corporation, and such stock may be held or disposed of by such new corporation.

**Sec. 9. Powers of consolidated corporations.** Such new corporation in addition to the general powers of corporations shall enjoy the rights, franchises, and privileges possessed by each of the corporations so consolidated, subject to the restrictions, liabilities, duties, and provisions contained in this chapter so far as the same may be applicable to the purposes for which it shall have been organized and expressed in the agreement for consolidation, and may prosecute or carry on any kind of business which each of the consolidating corporations was authorized by law to conduct.

**Sec. 10. Transfer of property of old corporations to consolidated corporations.** Upon the consummation of such act of consolidation, all the rights, privileges, franchises, and interests of each of the corporations, parties to the same, and all the property, real, personal and mixed, and all the debts due on whatever account to either of them, as well as all stock subscriptions and other things in action belonging to either of them, shall be taken and deemed to be transferred to and vested in such new corporation, without further act or deed; and all claims, demands, property, and every other interest shall be as effectually the property of the new corporation as they were of the former corporations, parties to such agreement and act; and the title to all real estate, taken by deed or otherwise, under the laws of this state, vested in either of such corporations, parties to such agreement and act, shall not be deemed to revert or be in any way impaired by reason of this chapter, or anything done by virtue thereof, but shall be vested in the new corporation by virtue of such act of consolidation; and all the rights, privileges, franchises, and property of the corporations, parties to any consolidation heretofore made under this chapter, shall vest as fully in the new corporation thereby created as they were vested in the corporations, parties to such consolidations.

**Sec. 11. Rights of creditors of old corporations.** The rights of creditors of any corporation that shall be so consolidated shall not in any manner be impaired, nor any liability or obligation for the payment of any money due or to become due to any person or persons, or any claim or demand for any cause existing against any such corporation or against any stockholder thereof be released or impaired by any such consolidation; but such new corporation shall succeed to and be held liable to pay and discharge all such debts and liabilities of each of the corporations consolidated in the same manner as if such new corporation had itself incurred the obligation or liability to pay such debt or damages, and the stockholders of the respective corporations consolidated shall continue, subject to all the liabilities, claims, and demands existing against them as such, at or before the consolidation; and no action or proceeding then pending before any court or tribunal in which any corporation that may be so consolidated is a party, or in which any such stockholder is a party, shall abate or be discontinued by reason of such consolidation, but may be prosecuted to final judgment, as though no consolidation had been entered into; or such new corporation may be substituted as a party in place of any corporation so consolidated, by order of the court in which such action or proceeding may be pending.

[Secs. 12—16. Relate to public service corporations.]

### General Corporation Law.

**Cons. Laws, 1909, c. 28. An Act relating to Corporations generally, constituting Chapter twenty-three of the Consolidated Laws.**

#### Article I. Short title; classification; definitions.

**Sec. 1. Short title.** This chapter shall be known as the "General Corporation Law".

**Sec. 2. Classification of corporations.** A corporation shall be either: 1. A municipal corporation; 2. A stock corporation; or 3. A non-stock corporation.



A stock corporation shall be either: 1. A moneyed corporation; 2. A railroad or other transportation corporation; or 3. A business corporation. A non-stock corporation shall be either: 1. A religious corporation; 2. A membership corporation; or 3. Any corporation other than a stock corporation.

A reference in a general law to a class of corporations described in accordance with this classification shall include all corporations theretofore formed belonging to such class.

**Sec. 3. Definitions.** 1. A "municipal corporation" includes a county, town, school district, village, and city and any other territorial division of the state established by law with powers of local government; 2. A "stock corporation" is a corporation having a capital stock divided into shares, and which is authorized by law to distribute to the holders thereof dividends or shares of the surplus profits of the corporation. A corporation is not a stock corporation because of having issued certificates called certificates of stock, but which are in fact merely certificates of membership, and which is not authorized by law to distribute to its members any dividends or share of profits arising from the operations of the corporation; 3. The term "non-stock corporation" includes every corporation other than a stock corporation; 4. A "moneyed corporation" is a corporation formed under or subject to the banking or the insurance law; 5. A "domestic corporation" is a corporation incorporated by or under the laws of the state or colony of New York. Every corporation which is not a domestic corporation is a foreign corporation, except as provided by the code of civil procedure for the purpose of construing such code; 6. The term "directors," when used in relation to corporations, shall include trustees or other persons, by whatever name known, duly appointed or designated to manage the affairs of the corporation; 7. The term "certificate of incorporation" shall include articles of association or any other written instruments required by law to be filed, to effect the incorporation of a corporation, including a certified copy of an original certificate of incorporation filed for such purpose in pursuance of law; 8. The term "member of a corporation" shall include every person having a right to vote at a meeting of the corporation for the election of directors, other than a person having a right to vote only upon a proxy; 9. The term "office of a corporation" means its principal office within the state, or principal place of business within the state if it has no principal office therein; 10. The term "business of a corporation," when used with reference to a non-stock corporation, includes the operations for the conduct of which it is incorporated; 11. The term "corporate law" or "laws," when used in any law forming a part of the consolidation of the general laws of the state of which this chapter is a part, means the general statutes of this state relating to corporations included in such consolidation.

## Article II. General provisions.

**Sec. 4. Qualifications of incorporators.** A certificate of incorporation must be executed by natural persons, who must be of full age, and at least two-thirds of them must be citizens of the United States and one of them a resident of this state. This section shall not apply to a corporation formed by the reincorporation or consolidation of existing corporations, or to the reorganization of a corporation upon the sale of the property and franchises of a previously existing corporation or otherwise.

**Sec. 5. Filing and recording certificates of incorporation.** 1. Every certificate of incorporation including the corporate name or title and every amended or supplemental certificate, and every certificate which alters the provisions of any certificate of incorporation or any amended or supplemental certificate hereafter executed, shall be in the English language, and except as otherwise provided by law, shall be filed in the office of the secretary of state, and shall be by him duly recorded and indexed in books specially provided therefor, and a certified copy of such certificate or amended or supplemental certificate with a certificate of the secretary of state of such filing and record, or a duplicate original of such certificate or amended or supplemental certificate shall be filed and similarly recorded and indexed in the office of the clerk of the county in which the office of the corporation is to be located, or, if it be a non-stock corporation, and such county be not determined upon at the time of executing the certificate of incorporation, in such county clerk's office as the judge approving the certificate shall direct.

All taxes required by law to be paid before or upon incorporation and the fees for filing and recording such certificate must be paid before filing. No corporation shall exercise any corporate powers or privileges until such taxes and fees have been paid. 2. Whenever under any law now or heretofore in force the certificate of incorporation of any corporation other than a stock corporation was or is required to be filed in more than one public office, a certified copy of such certificate so filed in any one of such public offices may be filed in such other office with the like effect as if the original had been duly filed therein, provided, however, that no rights accrued prior to the filing of such copy shall be impaired or affected thereby, provided also, that such filing of a copy shall not cause a duplication or similarity of corporate names in violation of the next succeeding section.

**Sec. 6. Corporate names.** 1. No certificate of incorporation of a proposed corporation having the same name as a corporation authorized to do business under the laws of this state, or a name so nearly resembling it as to be calculated to deceive, shall be filed or recorded in any office for the purpose of effecting its incorporation, or of authorizing it to do business in this state. A corporation formed by the reincorporation, reorganization or consolidation of other corporations or upon the sale of the property or franchises of a corporation, may have the same name as the corporation or one of the corporations to whose franchises it has succeeded. No corporation shall be hereafter organized under the laws of this state, with the word "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "title," "savings," "investment," "loan," or "benefit" as part of its name, except a corporation formed under the banking law or the insurance law. 2. No corporation, society or association, whether now existing or hereafter organized under or by virtue of the laws of this state, shall ever employ the words "Lucretia Mott" to designate, describe or name any hospital, infirmary, or dispensary, or any part thereof, or any similar institution.

**Sec. 7. Amended and supplemental certificates.** If in the original or amended certificate of incorporation of any corporation, or if in a supplemental certificate of any corporation any informality exist, or if any such certificate contain any matter not authorized by law to be stated therein, or if the proof or acknowledgment thereof shall be defective, the corporators or directors of the corporation may make and file an amended certificate correcting such informality or defect or striking out such unauthorized matter; and the certificate amended shall be deemed to be amended accordingly as of the date such amended certificate was filed, and upon the filing of such an amended certificate of incorporation, the corporation shall then for all purposes be deemed to be a corporation from the time of filing the original certificate.

The supreme court may, upon due cause shown, and proof made, and upon notice to the attorney-general, and to such other persons as the court may direct, and upon such terms and conditions as it may impose, amend any certificate of incorporation which fails to express the true object and purpose of the corporation, so as to truly set forth such object and purpose.

When an amended or supplemental certificate is filed, an entry shall be made upon the margin of the index and record of the original certificate of the date and place of record of every such amended certificate.

The amendment of a certificate under this section shall be without prejudice to any pending action or proceeding, or to any rights previously accrued.

**Sec. 8. Lost or destroyed certificates.** If either of the certificates of incorporation shall be lost or destroyed after filing, a certified copy of the other certificate may be filed in the place of the one so lost or destroyed and as of the date of its original filing, and such certified copy shall have the same force and effect as the original certificate had when filed.

**Sec. 9. Certificate and other papers as evidence; evidence of consolidation.** 1. The certificate of incorporation of any corporation duly filed shall be presumptive evidence of its incorporation, and any amended certificate or other paper duly filed or recorded relating to the incorporation of any corporation, or its existence or management, and containing facts required or authorized by law to be stated therein, shall be presumptive evidence of the existence of such facts. 2. Whenever, by the laws of any other state or territory, or the dominion of Canada, a copy of the certificate of organization or incorporation or any other certificate, certified

or exemplified by any officer or officers in such state or territory or dominion, is or shall be prima facie evidence of the due formation, creation, existence, organization, or capacity of any corporation or joint-stock company, created, organized, or located in such state, territory or dominion, or claiming so to be, such certificate or certificates, duly exemplified, or a duly exemplified copy thereof, shall be received in all actions and proceedings in this state, in or before all courts and officers, with the same force and effect in all respects as prima facie evidence as aforesaid, as in such other state, territory or dominion. 3. Where two or more corporations have been or shall hereafter be consolidated and merged into a new corporation, a certificate of the secretary of state under his official seal concisely stating the names of the respective corporations consolidated, the dates of the filing of the certificates respectively of the incorporation of such corporations in his office, the object for which they were formed, including the nature and locality of their business as set forth in their respective incorporation papers on file in his office, the date of the filing of the consolidation agreement and other proceedings in his office, the name of the new corporation formed by such consolidation and merger, the term of its corporate existence, the place where its principal office is situated and the amount of its capital stock, shall be presumptive and prima facie evidence in all actions and special proceedings for all purposes of the incorporation of the corporations so consolidated, the incorporation of the new corporation by such consolidation and merger from the date of filing of said consolidation agreement and proceedings, and of the other facts so certified by him.

**Sec. 10. Limitation of powers; provisions of certificate.** 1. No corporation shall possess or exercise any corporate powers not given by law, or not necessary to the exercise of the powers so given. 2. The certificate of incorporation of any corporation may contain any provision for the regulation of the business and the conduct of the affairs of the corporation, and any limitation upon its powers, or upon the powers of its directors and stockholders, which does not exempt them from the performance of any obligation or the performance of any duty imposed by law.

**Sec. 11. Grant of general powers.** Every corporation as such has power, though not specified in the law under which it is incorporated: 1. To have succession for the period specified in its certificate of incorporation or by law, and perpetually when no period is specified; 2. To have a common seal and alter the same at pleasure; 3. To acquire by grant, gift, purchase, devise, or bequest, to hold and to dispose of such property as the purposes of the corporation shall require, subject to such limitations as may be prescribed by law; 4. To appoint such officers and agents as its business shall require, and to fix their compensation; and 5. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and the transfer of its stock, if it has any, and the calling of meetings of its members. Such by-laws may also fix the amount of stock, which must be represented at meetings of the stockholders in order to constitute a quorum, unless otherwise provided by law. By-laws duly adopted at a meeting of the members of the corporation shall control the action of its directors. No by-law adopted by the board of directors regulating the election of directors or officers shall be valid unless published for at least once a week for two successive weeks in a newspaper in the county where the election is to be held, and at least thirty days before such election. Subdivisions four and five of this section shall not apply to municipal corporations.

**Sec. 12. Enlargement of limitations upon the amount of the property of non-stock corporations.** If any general or special law heretofore passed, or any certificate of incorporation, shall limit the amount of property a corporation other than a stock corporation may take or hold, such corporation may take and hold property of the value of six million dollars or less, or the yearly income derived from which shall be six hundred thousand dollars or less, notwithstanding any such limitations. In computing the value of such property, no increase in value arising otherwise than from improvements made thereon shall be taken into account.

**Sec. 13. Acquisition of additional real property.** When any corporation, except a life insurance corporation, shall have sold or conveyed any part of its real property, the supreme court may, notwithstanding any restriction of a general or special law, authorize it to purchase and hold from time to time other real property, upon satisfactory proof that the value of the property so purchased does

not exceed the value of the property so sold and conveyed within the three years next preceding the application.

**Sec. 14. Acquisition of property without the state.** Any domestic corporation transacting business in other states or foreign countries may acquire and dispose of such property as shall be requisite for such corporation in the convenient transaction of its business. Any domestic corporation establishing or maintaining a charitable, philanthropic, or educational institution within this state may also carry on its work and establish or maintain one or more branches of such institution or an additional institution or additional institutions in any other state, the District, of Columbia, or in any part of the territories or dependencies of the United States of America, or in any foreign country, and for either of said purposes may take by devise or bequest, hold, purchase, mortgage, sell and convey, or otherwise dispose of such real and personal property without this state as may be requisite therefor. But nothing in this section contained shall be construed as exempting from taxation property to any additional amount than is now allowed to such corporation under existing laws.

**Sec. 15. Certificate of authority of a foreign corporation.** No foreign stock corporation other than a moneyed corporation, shall, do business in this state without having first procured from the secretary of state a certificate that it has complied with all the requirements of law to authorize it to do business in this state, and that the business of the corporation to be carried on in this state is such as may be lawfully carried on by a corporation incorporated under the laws of this state for such or similar business, or if more than one kind of business, by two or more corporations so incorporated for such kinds of business respectively. The secretary of state shall deliver such certificate to every such corporation so complying with requirements of law. No foreign stock corporation doing business in this state shall maintain any action in this state upon any contract made by it in this state, unless prior to the making of such contract it shall have procured such certificate. This prohibition shall also apply to any assignee of such foreign stock corporation and to any person claiming under such assignee, or such foreign stock corporation or under either of them. No certificate of authority shall be granted to any foreign corporation having the same name as an existing domestic corporation, or a name so nearly resembling it as to be calculated to deceive, nor to any foreign corporation, other than a moneyed or insurance corporation, with the word "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," or "benefit," as a part of its name.

**Sec. 16. Proof to be filed before granting certificate.** Before granting such certificate the secretary of state shall require every such foreign corporation to file in his office a sworn copy in the English language of its charter or certificate of incorporation and a statement under its corporate seal, and the signature of its president, vice-president or other acting head, particularly setting forth the business or objects of the corporation which it is engaged in carrying on or which it proposes to carry on within the state, and a place within the state which is to be its principal place of business, and designating a person upon whom process against the corporation may be served within the state. The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within the state and such designation must specify such office or place of business of the said person so designated, and if it is within a city the street and street number if any, or other suitable designation of the particular locality. Such designation shall be accompanied with the written consent of the person designated and shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against the corporation may be served in this state or until the filing in the same office of a written revocation of said consent executed by the person so designated. If the person so designated dies or removes from the place where the corporation has its principal place of business within the state, or files such revocation of his consent, and the corporation does not within thirty days after such death or removal or revocation of consent designate in like manner another person upon whom process against it may be served within the state, the secretary of state may revoke the authority of the corporation to do business within the state, and process against the corporation in an action upon any liability incurred within this state before such revocation, may, after such death or removal, or revocation of consent, and

before another designation is made, be served upon the secretary of state. At the time of such service the plaintiff shall pay to the secretary of state two dollars, to be included in his taxable costs and disbursements, and the secretary of state shall forthwith mail a copy of such notice to such corporation if its address, or the address of any officer thereof, is known to him. The secretary of state may require the execution of any such designation, revocation or consent, to be authenticated as he deems proper and he may refuse to file it without such authentication.

**Sec. 17. Reincorporation of foreign moneyed corporations.** Any moneyed corporation duly organized by or under the laws of any state of the United States, and having an office or doing business in this state, may file, if a banking corporation or authorized to make loans upon pledges or deposits, in the office of the superintendent of banks, and if an insurance corporation in the office of the superintendent of insurance, the documents described in section eighteen of this chapter, and such documents shall be recorded as original certificates of incorporation are required by law to be recorded. The fees for filing and recording such documents, together with the tax, if any, required by law to be paid before the incorporation of a domestic company of the same class, must be paid before filing.

**Sec. 18. Papers to be filed upon reincorporation.** The documents to be filed by any such corporation shall include: 1. A copy of its charter, certificate of incorporation, or other document constituting it a body corporate, with such amendments, if any, as are desired by the corporation or are required by the laws of New York, authenticated as an original certificate of incorporation is required to be authenticated; 2. A declaration of its desire to become a corporation of this state and of its submission to the laws of this state, duly executed by the authority of the body in which its corporate powers are vested; 3. A certificate of the superintendent of that department in which these papers are filed that the charter, certificate of incorporation or other constituent document, with its proposed amendments, if any, as filed, is in all respects consistent with the laws of this state relating to domestic corporations of the same class; that the corporation applicant has complied with all conditions imposed by its laws upon domestic corporations of the same class beginning business in this state, with the exception of any provisions concerning the residence of a majority of the corporators, trustees, or directors of such corporation; that its name is not the same with the name of any domestic corporation, nor likely to be confounded with any such name, and that it has paid all fees and taxes due from it to the state, including the tax, if any, imposed by this state upon the original incorporation of a company of the same class.

**Sec. 19. When reincorporation effected and effect thereof.** From the date of filing these documents the corporation shall become and be a corporation of this state, and shall be subject to all the laws of this state applicable to corporations of the same class; but its existence and powers as such corporation shall terminate if it shall fail at any time for one month to maintain an office within the state at which an authorized officer or agent shall be present at all reasonable business hours, prepared to exhibit the books of the company to the proper authorities of this state and to receive service of process; or if it shall fail within two years to terminate its corporate existence derived from any other state, by surrender of its charter or by dissolution.

**Sec. 20. Acquisition of real property in this state by certain foreign corporations.** Any foreign corporation doing business in this state and created under the laws of the United States, or of any state or territory thereof, or of any foreign state or nation which borders the United States of America and which by its laws confers similar privileges on corporations created by the laws of the state of New York, may acquire and hold such real property in this state as may be necessary for its corporate purposes in the transaction of its business in this state, and convey the same by deed or otherwise in the same manner as a domestic corporation.

**Sec. 21. Acquisition by foreign corporation of real property in this state.** Any foreign corporation may purchase at a sale upon the foreclosure of any mortgage held by it, or, upon any judgment or decree for debts due it, or, upon any settlement to secure such debts, any real property within this state covered by or subject to such mortgage, judgment, decree, or settlement, and may take by devise any real property situated within this state and hold the same for not exceeding

five years from the date of such purchase, or from the time when the right to the possession thereof vests in such devisee, and convey it by deed or otherwise in the same manner as a domestic corporation.

**Sec. 22. Prohibition of banking powers.** No corporation except a corporation formed under or subject to the banking laws, shall by any implication or construction be deemed to possess the power of carrying on the business of discounting bills, notes, or other evidences of debt, of receiving deposits, or buying and selling bills of exchange, or shall issue bills, notes, or other evidences of debt for circulation as money.

**Sec. 23. Qualification of members as voters.** Unless otherwise provided in the certificate of incorporation, every stockholder of record of a stock corporation shall be entitled at every meeting of the corporation to one vote for every share of stock standing in his name on the books of the corporation; and at every meeting of a non-stock corporation, every member, unless disqualified by the by-laws, shall be entitled to one vote. The stockholders of a stock corporation, by a by-law adopted by vote at any annual meeting, or at any special meeting duly called for such purpose, may prescribe a period, not exceeding forty days prior to meetings of the stockholders, during which no transfer of stock on the books of the corporation may be made. Except in cases of express trust, or in which other provision shall have been made by written agreement between the parties, the record holder of stock which shall be held by him as security, or which shall actually belong to another, upon demand therefor and payment of necessary expenses thereof, shall issue to such pledgor or to such actual owner of such stock, a proxy to vote thereon. No member of a corporation shall sell his vote or issue a proxy to vote to any person for any sum of money or anything of value. The books and papers containing the record of membership of the corporation shall be produced at any meeting of its members upon the request of any member. If the right to vote at any such meeting shall be challenged, the inspectors of election, or other persons presiding thereat, shall require such books, if they can be had, to be produced as evidence of the right of the person challenged to vote at such meeting, and all persons who may appear from such books to be members of the corporation may vote at such meeting in person or by proxy, subject to the provisions of this chapter.

**Sec. 24. Cumulative voting.** The certificate of incorporation of any stock corporation may provide that at all elections of directors of such corporation, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them as he may see fit, which right, when exercised, shall be termed cumulative voting. The stockholders of a corporation heretofore formed, who, by the provisions of laws existing on April thirtieth, eighteen hundred and ninety-one, were entitled to the exercise of such right, may hereafter exercise such right according to the provision of this section.

**Sec. 25. Voting trust agreements.** A stockholder may, by agreement in writing transfer his stock to any person or persons for the purpose of vesting in him or them the right to vote thereon for a time not exceeding five years upon terms and conditions stated, pursuant to which such person or persons shall act; every other stockholder, upon his request therefor, may, by a like agreement in writing, also transfer his stock to the same person or persons and thereupon may participate in the terms, conditions, and privileges of such agreement; the certificates of stock so transferred shall be surrendered and canceled and certificates therefor issued to such transferee or transferees in which it shall appear that they are issued pursuant to such agreement and in the entry of such transferee or transferees as owners of such stock in the proper books of said corporation that fact shall also be noted and thereupon he or they may vote upon the stock so transferred during the time in such agreement specified; a duplicate of every such agreement shall be filed in the office of the corporation where its principal business is transacted and be open to the inspection of any stockholder, daily, during business hours.

**Sec. 26. Proxies.** Every member of a corporation, except a religious corporation, entitled to vote at any meeting thereof may so vote by proxy.

No officer, clerk, teller, or bookkeeper of a corporation formed under or subject to the banking law shall act as proxy for any stockholder at any meeting of any such corporation.

Every proxy must be executed in writing by the member himself, or by his duly authorized attorney. No proxy hereafter made shall be valid after the expiration of eleven months from the date of its execution unless the member executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period. Every proxy shall be revocable at the pleasure of the person executing it; but a corporation having no capital stock may prescribe in its by-laws the persons who may act as proxies for members, and the length of time for which proxies may be executed.

**Sec. 27. Challenges.** Every member of a corporation offering to vote at any election or meeting of the corporation shall, if required by an inspector of election or other officer presiding at such election or meeting, or by any other member present, take and subscribe the following oath: "I do solemnly swear that in voting at this election I have not, either directly, indirectly, or impliedly received any promise or any sum of money or anything of value to influence the giving of my vote or votes at this meeting or as a consideration therefor." Any person offering to vote as proxy for any other person shall present his proxy and, if so required, take and subscribe the following oath: "I do solemnly swear that I have not, either directly, indirectly, or impliedly, given any promise or any sum of money or anything of value to induce the giving of a proxy to me to vote at this election, or received any promise or any sum of money or anything of value to influence the giving of my vote at this meeting, or as a consideration therefor." The inspectors or persons presiding at the election may administer such oath, and all such oaths and proxies shall be filed in the office of the corporation.

**Sec. 28. Effect of failure to elect directors.** If the directors shall not be elected on the day designated in the by-laws, or by law, the corporation shall not for that reason be dissolved; but every director shall continue to hold his office and discharge his duties until his successor has been elected.

**Sec. 29. Mode of calling special election of directors.** If the election has not been held on the day so designated, the directors shall forthwith call a meeting of the members of the corporation for the purpose of electing directors, of which meeting notice shall be given in the same manner as of the annual meeting for the election of directors.

If such meeting shall not be so called within one month, or if held, shall result in a failure to elect directors, any member of the corporation may call a meeting for the purpose of electing directors by publishing a notice of the time and place of holding such meeting at least once in each week for two successive weeks immediately preceding the election, in a newspaper published in the county where the election is to be held and in such other manner as may be prescribed in the by-laws for the publication of notice of the annual meeting, and by serving upon each member, either personally or by mail, directed to him at his last known postoffice address, a copy of such notice at least two weeks before the meeting.

**Sec. 30. Mode of conducting special election of directors.** Such meeting shall be held at the office of the corporation, or if it has none, at the place in this state where its principal business has been transacted, or if access to such office or place is denied or cannot be had, at some other place in the city, village, or town where such office or place is or was located.

At such meeting the members attending shall constitute a quorum. They may elect inspectors of election and directors and adopt by-laws providing for future annual meetings and election of directors, if the corporation has no such by-laws, and transact any other business which may be transacted at an annual meeting of the members of the corporation.

**Sec. 31. Qualifications of voters and canvass of votes at special elections.** In the absence at such meeting of the books of the corporation showing who are members thereof, each person, before voting, shall present his sworn statement setting forth that he is a member of the corporation; and if a stock corporation, the number of shares of stock owned by him and standing in his name on the books of the corporation, and, if known to him, the whole number of shares of stock of the corporation outstanding. On filing such statement, he may vote as a member of the corporation; and if a stock corporation, he may vote on the shares of stock appearing in such statement to be owned by him and standing in his name on the books of the corporation.



The inspectors shall return and file such statements, with a certificate of the result of the election, verified by them, in the office of the clerk of the county in which such election is held, and the persons so elected shall be the directors of the corporation.

**Sec. 32. Powers of supreme court respecting elections.** The supreme court shall, upon the application of any person or corporation aggrieved by or complaining of any election of any corporation, or any proceeding, act or matter touching the same, upon notice thereof to the adverse party, or to those to be affected thereby, forthwith and in a summary way, hear the affidavits, proofs, and allegations of the parties, or otherwise inquire into the matters or causes of complaint, and establish the election or order a new election, or make such order and give such relief as right and justice may require.

**Sec. 33. Stay of proceedings in actions collusively brought.** If an action is brought against a corporation by the procurement or default of its directors, or any of them, to enforce any claim or obligation declared void by law, or to which the corporation has a valid defense, and such action is in the interest or for the benefit of any director, and the corporation has by his connivance made default in such action, or consented to the validity of such claim or obligation, any member of the corporation may apply to the supreme court, upon affidavit, setting forth the facts, for a stay of proceedings in such action, and an proof of the facts in such further manner and upon such notice as the court may direct, it may stay such proceedings or set aside and vacate the same, or grant such other relief as may seem proper, and which will not injuriously affect an innocent party, who, without notice of such wrongdoing and for a valuable consideration, has acquired rights under such proceedings.

**Sec. 34. Quorum of directors and powers of majority.** The affairs of every corporation shall be managed by its board of directors, at least one of whom shall be a resident of this state. Unless otherwise provided a majority of the board of directors of a corporation at a meeting duly assembled shall be necessary to constitute a quorum for the transaction of business and the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors. The members of a corporation may in by-laws fix the number of directors necessary to constitute a quorum at a number less than a majority of the board, but at least equal to one-third of its number. Subject to the by-laws, if any, adopted by the members of a corporation, the directors may make necessary by-laws of the corporation.

**Sec. 35. Directors as trustees in case of dissolution.** Upon the dissolution of any corporation, its directors, unless other persons shall be appointed by the legislature, or by some court of competent jurisdiction, shall be the trustees of its creditors, stockholders or members, and shall have full power to settle its affairs, collect and pay outstanding debts, and divide among the persons entitled thereto the money and other property remaining after payment of debts and necessary expenses.

Such trustees shall have authority to sue for and recover the debts and property of the corporation, by their name as such trustees, and shall jointly and severally be personally liable to its creditors, stockholders, or members, to the extent of its property and effects that shall come into their hands.

**Sec. 36. Forfeiture for non-user.** If any corporation, except a railroad, turn-pike, plank-road, or bridge corporation, shall not organize and commence the transaction of its business or undertake the discharge of its corporate duties within two years from the date of its incorporation, its corporate powers shall cease.

**Sec. 37. Extension of corporate existence.** Any domestic corporation at any time before the expiration thereof, may extend the term of its existence beyond the time specified in its original certificate of incorporation, or by law, or in any certificate of extension of corporate existence, by the consent of the stockholders owning two-thirds in amount of its capital stock, or if not a stock corporation, by the consent of two-thirds of its members, which consent shall be given either in writing or by vote at a special meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or a vice-president, and by the secretary or an assistant secretary of the corporation, and shall be filed



in the office of the secretary of state, and shall by him be duly recorded and indexed in a book specially provided therefor, and a certified copy of such certificate, with a certificate of the secretary of state of such filing and record, or a duplicate original of such certificate, shall be filed and similarly recorded and indexed in the office of the clerk of the county wherein the corporation has its principal place of business, and shall be noted in the margin of the record of the original certificates of such corporation, if any, in such offices, and thereafter the term of the existence of such corporation shall be extended as designated in such certificate.

The certificate of incorporation of any corporation whose duration is limited by such certificate or by law, may require that the consent of stockholders owning a greater percentage than two-thirds of the stock, if a stock corporation, or of more than two-thirds of the members, if a non-stock corporation, shall be requisite to effect an extension of corporate existence as authorized by this section.

**Sec. 38. Revival of corporate existence.** If the term of existence of any domestic corporation shall have expired and it shall be made satisfactorily to appear to the supreme court that such corporation was legally organized pursuant to any law of this state, and that it shall have issued its bonds payable at a date beyond the date fixed in its charter or certificate of incorporation for the expiration of its corporate existence, and such bonds shall be unmatured and unpaid, the supreme court may, upon the application of any person interested and upon such notice to such other parties as the court may require, by order, authorize the filing and recording of a certificate reviving the existence of such corporation, upon such conditions and with such limitations as such order shall specify, and extending such corporate existence for a term not exceeding the term for which it was originally incorporated. Upon filing and recording such certificate in the same manner as certificates of extension of corporate existence duly issued before the expiration of the existence of a domestic corporation are authorized by law to be filed and recorded, such corporate existence shall be revived and extended, in pursuance of the terms of such order, but such revival and extension shall not affect any litigation commenced after such expiration and pending at the time of such revival.

**Sec. 39. Approval of certificates of extension or revival; when required.** In the case of a corporation formed under or subject to the banking law, no certificate of extension or revival shall be filed or recorded unless it shall have indorsed thereon the written approval of the superintendent of banks; or, if an insurance corporation, unless it shall have indorsed thereon the written approval of the superintendent of insurance; and, if a turnpike or bridge corporation, it shall not be filed unless it shall have indorsed thereon or annexed thereto a certified copy of a resolution of the board of supervisors of each county in which such turnpike or bridge is located, approving of and authorizing such extension.

**Sec. 40. Extension when stock is owned by another corporation.** If all the stock of a corporation other than a corporation formed under or subject to the banking law, or an insurance corporation, or a turnpike, plank-road, or bridge corporation shall be lawfully owned by another stock corporation entitled by law to take a surrender and merger thereof, the corporate existence of such corporation whose stock is so owned may be extended at any time for the term of the corporate existence of the possessor corporation, by filing in the office or offices in which the original certificate or certificates of incorporation of the first-mentioned corporation were filed a certificate of such extension executed by its president and secretary and by such corporation owning all the shares of its capital stock.

**Sec. 41. Effect of extension.** Every corporation extending its corporate existence under this chapter or under any general law of the state shall thereafter be subject to the provisions of this chapter and of such general law, notwithstanding any special provisions in its charter, and shall thereafter be deemed to be incorporated under the general laws of the state relating to the incorporation of a corporation for the purpose of carrying on the business in which it is engaged, and shall be subject to the provisions of such law.

**Sec. 42. When notice or lapse of time unnecessary.** Whenever, under the provisions of any of the corporate laws, a corporation is authorized to take any action after notice to its members or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of any period of time, if such action be authorized or approved, and such requirements

be waived in writing by every member of such corporation, or by his attorney thereunto authorized.

**Sec. 43. As to acts of directors.** Whenever, under the provisions of any of the corporate laws, a corporation is authorized to take any action by the agreement or action of its directors, managers, or trustees, such agreement or action may be taken by such directors, regularly convened as a board, and acting by a majority of a quorum, except when otherwise expressly required by law or the by-laws of the corporation and any such agreement shall be executed in behalf of the corporation by such officers as shall be designated by the board of directors, managers, or trustees. At any meeting at which every member of the board of directors shall be present, though held without notice, any business may be transacted which might have been transacted if the meeting had been duly called. Except when otherwise required by law or the by-laws of the corporation, special meetings of the members of the corporation may be called in the same manner as the annual meeting thereof.

**Sec. 44. Political contributions prohibited; penalty.** No corporation or joint-stock association doing business in this state, except a corporation or association organized or maintained for political purposes only, shall directly or indirectly pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for, or in aid of, any corporation, joint-stock or other association organized or maintained for political purposes, or for, or in aid of, any candidate for political office or for nomination for such office, or for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used. Any officer, director, stockholder, attorney, or agent of any corporation or joint-stock association which violates any of the provisions of this section, who participates in, aids, abets or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor and punishable by imprisonment in a penitentiary or county jail for not more than one year and a fine of not more than one thousand dollars. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

### Article III. Change of name.

**Sec. 60. Petition by corporation to change name.** A petition to assume another corporate name may be made by a domestic corporation, whether incorporated by a general or special law, to the supreme court at a special term thereof, held in the judicial district in which its principal business office shall be situated, or, if it be other than a stock corporation, at a special term held in the judicial district in which its certificate of incorporation is filed or recorded, or in which its principal property is situated, or in which its principal operations are or theretofore have been conducted. If it be a banking, insurance or railroad corporation, the petition must be authorized by a resolution of the directors of the corporation, and approved if a banking corporation, by the superintendent of banks; if an insurance corporation, by the superintendent of insurance, and if a railroad corporation, by the public service commission. The petition to change the name of any other corporation must have annexed thereto a certificate of the secretary of state, that the name which such corporation proposes to assume is not the name of any other domestic corporation or a name which he deems so nearly resembling it, as to be calculated to deceive.

**Sec. 61. Contents of petition.** The petition must be in writing, signed by the petitioner and verified in like manner as a pleading in a court of record, and must specify the grounds of the application, its present name, and the name it proposes to assume, which must not be the name of any other corporation, or a name so

nearly resembling it as to be calculated to deceive; and if it be a railroad corporation, a corporation having banking powers or the power to make loans upon pledges or deposits, or to make insurances, that the petition has been duly authorized by a resolution of the directors of the corporation and approved by the proper officer.

**Sec. 62. Notice of presentation of petition.** If the petition be made by a corporation located elsewhere than in the city and county of New York, notice of the presentation thereof shall be published once in each week for three successive weeks in a newspaper of every county in which such corporation shall have a business office, or if it has no business office, of the county in which its principal corporate property is situated, or in which its operations are or theretofore have been principally conducted, which newspaper, if it be a banking corporation, shall be designated by the superintendent of banks, if an insurance corporation, by the superintendent of insurance, or if a railroad corporation, by the public service commission. In the city and county of New York such notice shall be published once in each week for three successive weeks in two daily newspapers published in such county.

If the petition be made by a domestic corporation organized under or subject to the religious or membership corporations law the court may dispense with the publication of the notice of the presentation of such petition or require notice of such presentation to be given to such persons and in such manner as the court thinks proper.

A copy of the petition and notice of motion shall be filed with the secretary of state, and the proposed name shall thereupon be reserved for said corporation until three weeks after the date of such motion, and until three weeks after the date of any adjournment of such motion if notice of such adjournment shall be filed with the secretary of state, and no certificate of incorporation of a proposed corporation, having the same name as the name proposed in such petition, or a name so nearly resembling it as to be calculated to deceive, shall be filed in any office for the purpose of effecting its incorporation, and no corporation formed without the State of New York having the same name or a name so nearly resembling it as to be calculated to deceive shall be given authority to do business in this state.

**Sec. 63. Order authorizing change.** If the court to which the petition is presented is satisfied thereby, or by the affidavit and certificate presented therewith, that the petition is true, and that there is no reasonable objection to the change of name proposed and that the petition has been duly authorized and that notice of the presentation of the petition, if required by law, has been made, the court shall make an order authorizing the petitioner to assume the name proposed on a day specified therein, not less than thirty days after the entry of the order. The order shall be directed to be entered and the papers on which it was granted to be filed within ten days thereafter in the office of the clerk of the county in which its certificate of incorporation, if any, shall be filed, or if there be none filed, in which its principal office shall be located, or if it has no business office in the county in which its principal property is situated, or in which its operations are or theretofore have been principally conducted, or in the office of the clerk of the county in which the special term granting the order is held; and that a certified copy of such order shall, within ten days after the entry thereof, be filed in the office of the secretary of state; and also, if it be a banking corporation, in the office of the superintendent of banks, or if it be an insurance corporation, in the office of the superintendent of insurance, or if it be a railroad corporation, in the offices of the public service commissions. Such order shall also direct the publication, within ten days after the entry thereof of a copy thereof, in a designated newspaper, in the county in which the order is directed to be entered, once in each week for four successive weeks.

The court may dispense with the publication of a copy of such order and require notice to be given to such persons and in such manner as it thinks proper if the petition be made by a domestic corporation organized under or subject to the religious or membership corporations law.

**Sec. 64. When change to take effect.** If the order shall be fully complied with, and within forty days after the making of the order, an affidavit of the publication thereof shall be filed and recorded in the office in which the order is entered, and in each office in which certified copies thereof are required to be filed, if any.

the petitioner shall, on and after the day specified for that purpose in the order, be known by the name which is thereby authorized to be assumed, and by no other name. No proceedings had prior to April fourth, eighteen hundred and ninety-four, under sections two thousand four hundred and fourteen and two thousand four hundred and fifteen of the code of civil procedure for the change of the name of a corporation, shall be invalid by reason of the non-filing of an affidavit of the publication of the order changing such name within twenty days from the date thereof.

**Sec. 65. Substitution of new name in pending action or proceeding.** An action or special proceeding, civil or criminal, commenced by or against a corporation whose name is so changed shall not abate, nor shall any relief, recovery or other proceeding therein be prevented, impeded or impaired in consequence of such change of name. The plaintiff in the action or the party instituting the special proceeding, or the people, as the case requires, may at any time, obtain an order amending any of the papers or proceedings therein, by the substitution of the new name, without costs and without prejudice to the action or proceeding.

#### **Article IV. Sale of corporate real property.**

**Sec. 70. Application of this article.** Whenever any corporation is required by law to make application to the court for leave to mortgage, lease or sell its real estate, the proceeding therefor shall be had pursuant to the provisions of this article.

**Sec. 71. Petition.** The proceeding shall be instituted by the presentation to the supreme court of the district or the county court of the county where the real property, or some part of it, is situated, by the corporation applicant, of a petition setting forth the following facts: 1. The name of the corporation and of its directors, trustees or managers, and of its principal officers, and their places of residence; 2. The business of the corporation or the object or purpose of its incorporation and a reference to the statute under which it was incorporated; 3. A description of the real property to be sold, mortgaged or leased, by metes and bounds, with reasonable certainty; 4. That the interests of the corporation will be promoted by the sale, mortgage or lease, of the real property specified, and a concise statement of the reasons therefor; 5. That such sale, mortgage, or lease has been authorized, by a vote of at least two-thirds of the directors, trustees, or managers of the corporation at a meeting thereof, duly called and held, and a copy of the resolution granting such authority; 6. The market value of the remaining real property of the corporation and the cash value of its personal assets, and the total amount of its debts and liabilities, and how secured, if at all; 7. The application proposed to be made of the moneys realized from such sale, mortgage, or lease; 8. Where the consent of the shareholders, stockholders or members of the corporation is required by law to be first obtained, a statement that such consent has been given, and a copy of the consent, or a certified transcript of the record of the meeting at which it was given, shall be annexed to the petition; 9. A demand for leave to mortgage, lease, or sell the real estate described.

The petition shall be verified in the same manner as a verified pleading in an action in a court of record.

**Sec. 72. Hearing on application.** Upon presentation of the petition, the court may immediately proceed to hear the application, or it may, in its discretion, direct that notice of the application shall be given to any person interested therein, as a member, stockholder, officer, or creditor of the corporation or otherwise, in which case the application shall be heard at the time and place specified in such notice, and the court may in any case appoint a referee to take the proofs and report the same to the court, with his opinion thereon. Any person, whose interests may be affected by the proceeding, may appear upon the hearing and show cause why the application should not be granted.

**Sec. 73. Order to sell, mortgage or lease.** Upon the hearing of the application, if it shall appear, to the satisfaction of the court, that the interests of the corporation will be promoted thereby, an order may be granted authorizing it to sell, mortgage, or lease the real property described in the petition, or any part thereof, for such sum, and upon such terms as the court may prescribe, and directing what disposition shall be made of the proceeds of such sale, mortgage, or lease.

**Sec. 74. Insolvent corporation.** If the corporation is insolvent, or its property and assets are insufficient to fully liquidate its debts and liabilities, the application shall not be granted, unless all the creditors of the corporation have been served with a notice of the time and place at which the application will be heard.

**Sec. 75. Service of notices.** Service of notices, provided for in this article, may be made either personally or, in case of absence, by leaving the same at the place of residence of the person to be served, with some person of mature age and discretion, at least eight days before the hearing of the application, or by mailing the same, duly enveloped and addressed and postage paid, at least sixteen days before such hearing.

**Sec. 76. Practice in cases not herein provided for.** In all applications made under this article, where the mode or manner of conducting any or all of the proceedings thereon is not expressly provided for, the court before whom such application may be pending, shall have the power to make all the necessary orders and give the proper directions to carry into effect the object and intent of this article, or of any act authorizing the sale of corporate real property, and the practice in such cases shall conform, as near as may be, to the ordinary practice in such court.

## **Article V. Judicial supervision of corporation and of the officers and members thereof.**

**Sec. 90. Action against officers of corporation for misconduct.** An action may be maintained against one or more trustees, directors, managers, or other officers of a corporation, to procure a judgment for the following purposes, or so much thereof as the case requires: 1. Compelling the defendants to account for their official conduct, including any neglect of or failure to perform their duties, in the management and disposition of the funds and property, committed to their charge; 2. Compelling them to pay to the corporation, which they represent, or to its creditors, any money, and the value of any property, which they have acquired to themselves, or transferred to others, or lost, or wasted, by or through any neglect of or failure to perform or by other violation of their duties; 3. Suspending a defendant from exercising his office, where it appears that he has abused his trust; 4. Removing a defendant from his office, upon proof or conviction of misconduct, and directing a new election to be held by the body or board duly authorized to hold the same, in order to supply the vacancy created by the removal; or, where there is no such body or board, or where all the members thereof are removed, directing the removal to be reported to the governor, who may, with the advice and consent of the senate, fill the vacancies; 5. Setting aside an alienation of property, made by one or more trustees, directors, managers, or other officers of a corporation, contrary to a provision of law, or for a purpose foreign to the lawful business and objects of the corporation, where the alienee knew the purpose of the alienation; 6. Restraining and preventing such an alienation, where it is threatened, or where there is good reason to apprehend that it will be made; 7. The court must, upon the application of either party, make an order directing the trial by a jury of the issue of neglect or failure of defendants to perform their duties; and for that purpose the questions to be tried must be prepared and settled as prescribed in section nine hundred and seventy of the code of civil procedure.

As to any litigation pending prior to September one, nineteen hundred and seven, the provisions of this section as they existed prior to that date shall apply.

**Sec. 91. Who may bring such an action.** An action may be brought, as prescribed in the last section, by the attorney-general in behalf of the people of the state, or, except where the action is brought for the purpose specified in subdivision third or fourth of that section, by a creditor of the corporation, or by a trustee, director, manager, or other officer of the corporation, having a general superintendence of its concerns.

**Sec. 92. Visitation power over corporation not affected by this article.** This article does not divest or impair any visitatorial power over a corporation, which is vested by statute in a corporate body, or a public officer.

## **Article VI. Action for sequestration, action for dissolution and action to enforce individual liability of officer and member of corporation.**

**Sec. 100. Action by judgment creditor for sequestration.** Where final judgment for a sum of money has been rendered against a corporation created by or

under the laws of the state, and an execution issued thereupon to the sheriff of the county, where the corporation transacts its general business, or where its principal office is located, has been returned wholly or partly unsatisfied, the judgment creditor may maintain an action to procure a judgment sequestrating the property of the corporation, and providing for a distribution thereof, as prescribed in section one hundred and twelve of this chapter.

**Sec. 101. Action to dissolve a corporation.** In either of the following cases, an action to procure a judgment, dissolving a corporation, created by or under the laws of the state, and forfeiting its corporate rights, privileges, and franchises, may be maintained, as prescribed in the next section: 1. Where the corporation has remained insolvent for at least one year; 2. Where it has neglected or refused, for at least one year, to pay and discharge its notes or other evidences of debt; 3. Where it has suspended its ordinary and lawful business for at least one year; 4. If it has banking powers, or power to make loans on pledges or deposits, or to make insurances, where it becomes insolvent or unable to pay its debts, or has violated any provision of the act, by or under which it was incorporated, or of any other act binding upon it.

**Sec. 102. Who may bring action to dissolve a corporation.** An action specified in the last section, may be maintained by the attorney-general, in the name and in behalf of the people. And whenever a creditor or stockholder of any corporation submits to the attorney-general a written statement of facts, verified by oath, showing grounds for an action under the provisions of the last section, and the attorney-general omits, for sixty days after this submission, to commence an action specified in the last section, then, and not otherwise, such creditor or stockholder may apply to the proper court for leave to commence such an action, and on obtaining leave may maintain the same accordingly.

**Sec. 103. Temporary injunction in action authorized by this article.** In an action, brought as prescribed in this article, the court may, upon proof of the facts authorizing the action to be maintained, grant an injunction order, restraining the corporation, and its trustees, directors, managers, and other officers, from collecting or receiving any debt or demand, and from paying out, or in any way transferring or delivering, to any person, any money, property, or effects of the corporation, during the pendency of the action; except by express permission of the court. Where the action is brought to procure the dissolution of the corporation, the injunction may also restrain the corporation, and its trustees, directors, managers, and other officers, from exercising any of its corporate rights, privileges, or franchises, during the pendency of the action; except by express permission of the court. The provisions of title second of chapter seventh of the code of civil procedure, relating to the granting, vacating or modifying of an injunction order, apply to an injunction order, granted as prescribed in this section; except that it can be granted only by the court.

**Sec. 104. Temporary receiver.** In such an action, the court may also, at any stage thereof, appoint one or more receivers of the property of the corporation. A receiver, so appointed, before final judgment is a temporary receiver, until final judgment is entered. A temporary receiver has power to collect and receive the debts, demands, and other property of the corporation; to preserve the property, and the proceeds of the debts and demands collected; to sell or otherwise dispose of the property as directed by the court; to collect, receive and preserve the proceeds thereof; and to maintain any action or special proceeding, for either of those purposes. He must qualify as prescribed by law for the qualification of a permanent receiver. Unless additional powers are specially conferred upon him, as prescribed in the next section, a temporary receiver has only the powers specified in this section, and those which are incidental to the exercise thereof.

**Sec. 105. Additional powers and duties of temporary receiver.** A temporary receiver, appointed as prescribed in the last section, is, in all respects, subject to the control of the court. In addition to the powers conferred upon him, by the provisions of the last section, the court may, by the order or interlocutory judgment appointing him, or by an order subsequently made in the action, or by the final judgment, confer upon him the powers and authority, and subject him to the duties and liabilities, of a permanent receiver, or so much thereof as it thinks proper; except that he shall not make any distribution among the creditors or stockholders, before final judgment, unless he is specially directed so to do by the court.

**Sec. 106. Permanent receiver.** A receiver appointed by or pursuant to a final judgment in the action, or a temporary receiver who is continued by the final judgment, is a permanent receiver, and has all the powers and authority conferred, and is subject to all the duties and liabilities imposed upon a receiver in article eleven of this chapter.

**Sec. 107. Additional duties and liabilities of permanent receiver.** A permanent receiver shall keep an account of all moneys received by him, and on the first days of January, April, July, and October, in each and every year make and file a written statement, verified by his oath that such statement is correct and true, showing the amount of money received by such receiver, his agents or attorneys, the amount he has a right to retain and the items for which he claims to retain the same, and the distributive share due each person interested therein. He shall pay such distributive share to the person or persons entitled thereto, on demand, at any time after such statement. Such account, statement, and all the books and papers of the corporation in the hands of such receiver, shall at all reasonable times be open for the inspection of all persons having an interest therein. And in case of neglect or refusal to comply with either of the above requirements, or any duty imposed upon him, the supreme court, at either an appellate division or special term, shall, on the application of the party aggrieved, unless such neglect or refusal shall be satisfactorily explained to the court, forthwith remove such receiver, and appoint some suitable person as receiver in his place. Such removal shall not vitiate or annul any legal proceedings had by such receiver; but such proceedings shall be continued by such successor as if no removal had been made. Such receiver shall also be liable to pay to the party interested, interest at the rate of ten per centum per annum on all moneys due to such party and retained by him more than one day after such demand made as aforesaid.

**Sec. 108. Application for appointment of receiver.** Applications made by the attorney-general for the appointment of a receiver of a corporation shall be made in the judicial district in which the action in which the appointment is sought is triable.

**Sec. 109. Officers and stockholders may be made parties in action brought by creditor.** Where the action is brought by a creditor of a corporation, and the stockholders, directors, trustees, or other officers, or any of them, are made liable by law, in any event or contingency, for the payment of his debt, the persons, so made liable, may be made parties defendant, by the original or by a supplemental complaint; and their liability may be declared and enforced by the judgment in the action.

**Sec. 110. Separate action may be brought against officers and stockholders.** Where the stockholders, directors, trustees, or other officers of a corporation, who are made liable, in any event or contingency, for the payment of a debt, are not made parties defendant, as prescribed in the last section, the plaintiff in the action may maintain a separate action against them, to procure a judgment, declaring, apportioning, and enforcing their liability.

**Sec. 111. Proceedings in such actions.** In an action brought as prescribed in either of the last two sections, the court must, when it is necessary, cause an account to be taken of the property and of the debts of the corporation, and thereupon the defendant's liability must be apportioned accordingly; but, if it affirmatively appears, that the corporation is insolvent, and has no property to satisfy its creditors, the court may, without taking such an account, ascertain and determine the amount of each defendant's liability, and enforce the same accordingly.

**Sec. 112. Distribution of property of corporation by judgment in actions under this article.** A final judgment in an action, brought against a corporation, as prescribed in this article, either separately or in conjunction with its stockholders, directors, trustees, or other officers, must provide for a just and fair distribution of the property of the corporation, and of the proceeds thereof, among its fair and honest creditors, in the order and in the proportions prescribed by law, in case of the voluntary dissolution of a corporation.

**Sec. 113. Recovery of stock subscriptions.** Where the stockholders of the corporation are parties to the action, if the property of the corporation is not sufficient to discharge its debts, the interlocutory or final judgment, as the case requires must adjudge that each stockholder pay into court the amount due and remaining unpaid, on the shares of stock held by him, or so much thereof as is necessary to satisfy the debts of the corporation.

**Sec. 114. Liability of directors and stockholders.** If it appears, that the property of the corporation, and the sums collected or collectible from the stockholders, upon their stock subscriptions, are or will be insufficient to pay the debts of the corporation, the court must ascertain the several sums, for which the directors, trustees, or other officers, or the stockholders of the corporation, being parties to the action, are liable; and must adjudge that the same be paid into court, to be applied, in such proportions and in such order as justice requires, to the payment of the debts of the corporation.

**Sec. 115. Effect of this article.** This article does not repeal or affect any special provision of law, prescribing that a particular kind of corporation shall cease to exist, or shall be dissolved, in a case or in a manner, not prescribed in this article; or any special provision of law, prescribing the mode of enforcing the liability of the stockholders of a particular kind of corporation.

## **Article VII. Action to annul a corporation.**

**Sec. 130. Action by attorney-general to annul corporation when legislature directs.** The attorney-general, whenever he is so directed by the legislature, must bring an action against a corporation created by or under the laws of the state, to procure a judgment, vacating or annulling the act of incorporation, or any act renewing the corporation, or continuing its corporate existence, upon the ground that the act was procured upon a fraudulent suggestion, or the concealment of a material fact, made by or with the knowledge and consent of any of the persons incorporated.

**Sec. 131. Action by attorney-general to annul corporation by leave of court.** Upon leave being granted, as prescribed in the next section, the attorney-general may bring an action against a corporation created by or under the laws of the state, to procure a judgment, vacating the charter or annulling the existence of the corporation, upon the ground that it has, either: 1. Offended against any provision of an act, by or under which it was created, altered or renewed, or an act amending the same, and applicable to the corporation; or, 2. Violated any provision of law, whereby it has forfeited its charter, or become liable to be dissolved, by the abuse of its powers; or, 3. Forfeited its privileges or franchises, by a failure to exercise its powers; or, 4. Done or omitted any act, which amounts to a surrender of its corporate rights, privileges, and franchises; or, 5. Exercised a privilege or franchise, not conferred upon it by law.

**Sec. 132. Notice of application for leave to commence action to annul corporation.** Before granting leave, the court may, in its discretion, require such previous notice of the application as it thinks proper, to be given to the corporation, or any officer thereof, and may hear the corporation in opposition thereto.

**Sec. 133. Jury trial.** An action, brought as prescribed in this article, is triable, of course and of right, by a jury, as if it was an action specified in section nine hundred and sixty-eight of the code of civil procedure and without procuring an order, as prescribed in section nine hundred and seventy of the code of civil procedure.

**Sec. 134. Injunction and receiver in final judgment.** Where any of the matters, specified in section one hundred and thirty or section one hundred and thirty-one of this article, are established in an action, brought as prescribed in either of those sections, the court may render final judgment that the corporation, and each officer thereof, be perpetually enjoined from exercising any of its corporate rights, privileges, and franchises; and that it be dissolved. The judgment must also provide for the appointment of a receiver, the taking of an account, and the distribution of the property of the corporation, among its creditors and stockholders, as where a corporation is dissolved upon its voluntary application, as prescribed in article nine of this chapter.

**Sec. 135. Temporary injunction.** In an action, brought as prescribed in this article, an injunction order may be granted, at any stage of the action, restraining the corporation, and any or all of its directors, trustees, and other officers, from exercising any of its corporate rights, privileges, or franchises; or from exercising certain of its corporate rights, privileges, or franchises, specified in the injunction order; or from exercising any franchise, liberty, or privilege, or transacting any business, not allowed by law. Such an injunction is deemed one of those specified in section six hundred and three of the code of civil procedure, and all the provisions of title second of chapter seventh of the code of civil procedure applicable



to an injunction specified in that section, apply to an injunction granted as prescribed in this section, except that it can be granted only by the court.

**Sec. 136. Filing and publishing judgment.** Where final judgment is rendered against a corporation, in an action, brought as prescribed in this article, the attorney-general must cause a copy of the judgment-roll to be forthwith filed in the office of the secretary of state; who must cause a notice of the substance and effect of the judgment, to be published, for four weeks, in a newspaper printed in the county, wherein the principal place of business of the corporation was located.

### **Article VIII. Action to dissolve moneyed corporation.**

**Sec. 150. Temporary injunction and receiver in action against moneyed corporation.** Whenever the attorney-general shall commence an action against a moneyed corporation upon the information of either the superintendent of insurance, or the superintendent of banks, for the dissolution or sequestration of the property or annulment of the charter of a corporation formed under or subject to the banking or insurance law, and shall be satisfied that it is unsafe and inexpedient for such corporation to continue doing business, the supreme court may, on his application, in a case provided by law, appoint a receiver thereof, and may on such appointment grant an injunction restraining such corporation from carrying on its business until the further order of the court. The court may, in its discretion, dispense with notice of the application.

**Sec. 151. Order to show cause why injunction and receiver should not be permanent.** The court, on granting an order without notice, either for the appointment of a receiver or for an injunction, or for both forms of relief, as herein provided, shall make an order that the corporation so proceeded against show cause at a term of the court to be held not more than thirty days thereafter, why such receiver and injunction should not be permanent. Such order shall be served not less than eight days before the date upon which the hearing thereon is to be had. Unless the court otherwise directs, the receiver appointed in the first instance shall be permanent receiver of such corporation, and the injunction shall be continued during the pendency of the litigation. Such receiver shall, unless otherwise ordered by the court, continue to act as such up to and after final judgment, and until the affairs of the corporation shall be finally settled and its property distributed by him according to law. The bond to be given by the receiver on his appointment shall be fixed at such sum and so conditioned that it shall continue in force and effect until the final discharge of such receiver, including any liability which may be incurred by said receiver by virtue of his appointment as such in the final judgment, in case he shall be so named therein.

**Sec. 152. Inventory and appraisal by receiver.** It shall be the duty of the receiver to take an inventory and make an appraisal of the assets and property of the corporation. In case the corporation is subject to the banking law, two disinterested appraisers shall be appointed by the superintendent of banks to aid in this duty, and in case the corporation is subject to the insurance law, such appraisers shall be appointed by the superintendent of insurance. Ten days' notice of such inventory and appraisal shall be given to the corporation and such inventory and appraisal shall be completed and filed with the clerk of the supreme court in the county in which the trial is to be had, within ninety days after the appointment of such receiver, and a certified copy thereof in the office of the attorney-general, and in the office of the superintendent of banks, or in the office of the superintendent of insurance, as the case may be, unless for good cause shown the officer appointing such appraisers shall, in writing, extend the time for the completion thereof. Such appraisers shall receive as compensation a reasonable sum, not exceeding fifteen dollars per day and actual and necessary expenses, to be paid by the receiver upon the approval of the officer by whom they were named. The receiver shall be chargeable with the amount of such inventory and shall be relieved therefrom to the same extent and upon the same grounds as in the like case of an executor.

**Sec. 153. Conversion of assets into cash by receiver.** The receiver shall proceed, immediately upon his appointment, to convert the assets of the corporation into cash.

**Sec. 154. Employment of counsel by receiver.** It shall not be lawful for any receiver to pay to any attorney or counsel any costs, fees or allowance until the amount thereof shall have been stated to the special term, as expenses incurred

by such receiver and shall have been approved by that court by an order duly entered. Any such order shall be the subject of review by the appellate division and the court of appeals on appeal thereto taken by any party. The receiver may employ not to exceed one counsel unless the employment of additional counsel shall be authorized by the supreme court after notice to the attorney-general of an application therefor.

**Sec. 155. Notice to creditors by receiver.** 1. Within thirty days after a receiver qualifies he shall cause to be published once a week for twelve weeks in a newspaper published at the principal place of business of the corporation, a notice to all creditors of the corporation to present their claims to such receiver at his place of business within fifteen days after the last publication of such order. He shall also mail a copy of such notice to all the creditors of the corporation known to him or as shown on the books of the company, at their last known place of residence. 2. The receiver of any title guaranty company heretofore or hereafter appointed, which company is authorized by law to issue policies of insurance or agreements of indemnity or guaranty, and which corporation has issued and outstanding at the time of the appointment of the receiver, policies of insurance or agreements of indemnity or guaranty, exceeding two thousand in number, shall not be required to mail to the holders or owners of said policies of insurance or of said agreements, the notice required by law to be given to creditors of an insolvent moneyed corporation; but such receiver shall cause a notice to be published twice a week, for four successive weeks, in two newspapers published in the county where said corporation has its principal place of business; which said notice shall require all creditors and owners and holders of outstanding policies of insurance or agreements of indemnity or guaranty, to exhibit and prove their claim, within sixty days; and, in default of so doing, shall be precluded from all benefit of the judgment and from any and all distribution which may be made thereunder, except that the creditor or holder or owner of any policy or agreement of indemnity or guaranty, who shall exhibit or prove his claim, with an affidavit that he had no notice or knowledge thereof, in time to comply with the provisions hereof, at any time before an order is made directing a final settlement and distribution of assets of such corporation, shall be entitled to have his claim received, and shall have the same rights and benefits thereon, so far as the assets of such corporation then remaining undistributed may be applied, as if his claim had been exhibited and proved within the time limited by such notice. This subdivision shall apply to receivers of all moneyed corporations.

**Sec. 156. Allowance, rejection and adjustment of claims by receiver.** The receiver shall have the same power and authority with reference to the allowance or rejection of claims as is given to executors, and no reference shall be had to pass upon claims except such as may be disputed by such receiver. In case any claim shall be disputed, the receiver shall immediately upon the expiration of the time for the presentation of claims, upon notice to the parties whose claims have been rejected, apply to the court for the appointment of a referee to hear and determine as to the allowance thereof. Claims allowed by the receiver shall be subject to objection upon the final settlement and their validity may be determined as the validity of claims against estates are determined upon final settlement by a surrogate.

**Sec. 157. Final settlement and distribution by receiver.** The receiver may apply for a final settlement of his accounts and an order for distribution at any time after the expiration of six months, and shall so apply within eighteen months after qualifying as such. The attorney-general or any creditor, or party interested, may apply for an order that the receiver show cause why an accounting and distribution should not be had at any time after the expiration of one year after the receiver qualifies; and it shall be the duty of the attorney-general, after the expiration of eighteen months from the time the receiver enters upon his duties, in case he has not applied for a final settlement of his accounts, to apply for such an order on notice to such receiver. In case of such application by a party other than the receiver, the court shall direct the receiver to take steps to account with all convenient speed. The receiver is not required or authorized to file any account, except as herein provided, except by special order of the court.

**Sec. 158. Notice of account and accounting by receiver.** 1. The receiver shall file his account, together with a statement of the items and amounts claimed by

his counsel, up to that date with the court and a duplicate thereof, together with the vouchers, with the attorney-general, at least thirty days before the time fixed for his final settlement and accounting, and the attorney-general shall serve upon the attorney for the receiver any objections he may have to the account, or to the statement as to the items and amounts claimed by counsel for compensation, appearing in such account on or before such hearing. The receiver shall also within ten days after the filing of the account, mail to each creditor of the corporation a notice of the time and place of the filing of his account, and a notice of the time and place of the presentation of the account to the court. Unless objection is made to the items of the account by a creditor or on behalf of the attorney-general, no referee shall be appointed to pass thereon, but the same shall be examined and settled by the court. In case objection is made a referee may be appointed to take the testimony and report the same to the court. 2. Prior to the final settlement of accounts of a receiver of any moneyed corporation, having in force, at the time of his appointment, outstanding policies of insurance or agreements of indemnity or guaranty, exceeding two thousand in number, said receiver shall give notice to all of the creditors and to the owners or holders of said policies of insurance or agreements of indemnity or guaranty, issued or entered into by such insolvent corporation, by publication of a notice published at least twice a week, for three successive weeks, immediately preceding the making of an application for a final settlement of his accounts and for an order for the distribution of the assets in his hands. Said notice shall state the fact that an application for a final settlement of his accounts and for an order for the distribution of the assets in hand will be made, and shall also state the time and place, when and where the application will be made. Upon the hearing of such application and motion, the court shall, unless objection is made to the items of the account by a creditor or by a holder or owner of a policy of insurance or agreement of indemnity or guaranty, or on behalf of the attorney-general, examine and settle the said accounts, and make an order for the settlement, adjustment and distribution of the assets in the hands of the receiver. Where objection is made to the items of account, the court may refer the same to a referee to examine and pass thereon. This subdivision shall apply to receivers of all moneyed corporations heretofore or hereafter appointed.

**Sec. 159. Proceedings upon accounting.** Upon any accounting by the receiver, after the expiration of the time for creditors to present claims, the court shall direct the receiver to immediately convert the entire assets of the corporation in his hands into cash, in case any of the assets have not been so converted, unless good and sufficient cause to the contrary shall appear to the satisfaction of the court, such as to authorize an order granting the receiver additional time for that purpose, and upon any such accounting the court shall direct the receiver to distribute the assets of the corporation in his hands to the persons entitled thereto, except so much thereof as may be necessary to be retained for the purpose of administering the trust and making payment upon contested claims, and upon such claims as may thereafter be presented and entitled to be paid. Whenever the attorney-general shall apply for an order to show cause why an accounting should not be had by a receiver by reason of his failure to so account within twelve months after his appointment, and shall deem it advisable to designate counsel to act on his behalf, the court may, upon the accounting, make a reasonable allowance by way of counsel fee to counsel so designated.

**Sec. 160. Claims barred after distribution of assets by receiver.** Upon the granting of the application and the making of the order of distribution, as provided in subdivision two of section one hundred and fifty-eight of this article, and the distribution of the assets in the hands of the receiver, in the manner directed by the order of the court, all claims of the creditors or of holders or owners of policies of insurance or agreements of indemnity or guaranty, against such receiver, shall be barred. This section shall apply to receivers of all moneyed corporations.

**Sec. 161. Application of article.** Except as provided in sections one hundred and fifty-five, one hundred and fifty-eight, subdivision two, and one hundred and sixty of this article, this article shall apply to all actions for the appointment of receivers of moneyed corporations brought by the attorney-general, and to all receivers of such corporations heretofore or hereafter appointed, and to the settlement and adjustment of their accounts and distribution of assets in their hands, and all proceedings with reference thereto hereafter to be taken, and shall super-

sede and repeal all provisions of law inconsistent herewith, so far as the same relate to actions for the sequestration, annulment or dissolution of moneyed corporations. As to all other corporations and as to matters not affected by this article, provisions of law heretofore existing shall remain in full force and effect.

## **Article IX. Proceedings for voluntary dissolution of corporation.**

**Sec. 170. Petition for voluntary dissolution of corporation.** If a majority of the directors, trustees, or other officers, having the management of the concerns of a corporation created by or under the laws of the state, discover that the stock, effects, and other property thereof are not sufficient to pay all just demands, for which it is liable, or to afford a reasonable security to those who may deal with it; or if, for any reason, they deem it beneficial to the interests of the stockholders that the corporation should be dissolved, they may present a petition to the supreme court praying for a final order dissolving the corporation, as prescribed in this article.

**Sec. 171. Directors or trustees may be required to petition.** It shall be the duty of a majority of the directors or trustees of every corporation created by or under the laws of this state to present a petition as prescribed in the last section whenever directed so to do by a majority in interest of its stockholders.

**Sec. 172. Petition when directors or trustees do not agree.** If a corporation, created under a general statute of the state for the formation of corporations or under any special act or charter has an even number of trustees or directors who are equally divided respecting the management of its affairs, or if the stock of such corporation is equally divided into not more than two independent ownerships or interests, or if the entire stock of the corporation is, at that time, owned by the trustees or directors who are even in number or equally divided representing the management of its affairs, or if the stock is so divided, that one-half thereof is owned or controlled by persons favoring the course of part of the trustees or directors, and one-half thereof is owned by persons favoring the course of the other trustees or directors, the trustees or directors or the stockholders or one or more of them may present a petition as prescribed in section one hundred and seventy of this chapter.

**Sec. 173. Corporations excepted from two preceding sections.** Sections one hundred and seventy-one and one hundred and seventy-two of this chapter do not apply to a savings bank, a trust company, a safe deposit company, or a corporation formed to rent safes in burglar and fireproof vaults, or for the construction or operation of a railroad, or for aiding in the construction thereof, or for carrying on the business of banking or insurance, or intended to derive a profit from the loan or use of money.

**Sec. 174. Contents of petition.** The petition must show that the case is one of those specified in sections one hundred and seventy and one hundred and seventy-two of this chapter, and must state the reasons, which induce the petitioner or petitioners to desire the dissolution of the corporation. A schedule must be annexed to the petition, containing the following matters, as far as the petitioner or petitioners know, or have the means of knowing the same: 1. A full and true account of all the creditors of the corporation, and of all unsatisfied engagements, entered into by, and subsisting against, the corporation; 2. A statement of the name and place of residence of each creditor, and of each person with whom such an engagement was made, and to whom it is to be performed, if known; or if either is not known, a statement of that fact; 3. A statement of the sum owing to each creditor, or other person specified in the last subdivision, and the nature of each debt, demand, or other engagement; 4. A statement of the true cause and consideration of the indebtedness to each creditor; 5. A full, just, and true inventory of all the property of the corporation, and of all the books, vouchers, and securities, relating thereto; 6. A statement of each incumbrance upon the property of the corporation, by judgment, mortgage, pledge, or otherwise; 7. A full, just, and true account of the capital stock of the corporation, specifying the name of each stockholder; his residence, if it is known, or if it is not known, stating that fact; the number of shares belonging to him; the amount paid in upon his shares; and the amount still due thereupon.

**Sec. 175. Affidavit to be annexed to petition.** An affidavit, made by each of the petitioners, to the effect that the matters of fact, stated in the petition and

the schedule, are just and true, so far as the affiant knows or has the means of knowing the same, must be annexed to the petition and schedule.

**Sec. 176. Presentation of petition.** The papers must be presented at a special term of the supreme court, held within the judicial district, embracing the county wherein the principal office of the corporation is located.

**Sec. 177. Corporations without stockholders.** In the case of corporations affected by the provisions of this article and not having stockholders, it shall be sufficient for the purposes of this article to notify, name and refer to the "members" of such corporations, instead of "stockholders," as herein provided.

**Sec. 178. Action by court upon petition for dissolution.** In a case specified in sections one hundred and seventy-one and one hundred and seventy-two of this chapter the court may, in its discretion, entertain or dismiss the application. Where it entertains the application, or where the cause is one of those specified in section one hundred and seventy of this chapter, the court must make an order, requiring all persons interested in the corporation to show cause before it, or before a referee designated in the order, at a time and place therein specified, not less than six weeks after the granting of the order, why the corporation should not be dissolved.

**Sec. 179. Publication of order to show cause why corporation should not be dissolved.** A copy of the order must be published, as prescribed therein, at least once in each of the three weeks immediately preceding the time fixed therein for showing cause, in one or more newspapers, specified in the order, published in the city or county wherein the order is entered.

**Sec. 180. Service of order to show cause.** A copy of the order must also be served upon each of the persons, specified in the schedule as a creditor or stockholder of the corporation, or as a person to whom an engagement of the corporation is to be performed, other than a person whose residence is stated to be unknown, or to be without the United States. The service must be made either personally, at least ten days before the time appointed for the hearing; or by depositing a copy of the order, at least twenty days before the time so appointed, in the post-office, inclosed in a postpaid wrapper, addressed to the person to be served, at his residence, as stated in the schedule.

**Sec. 181. Entering and filing order and papers.** The order must be entered, and the papers must be filed, within ten days after the order is made, with the clerk of the county where the principal office of the corporation is located.

**Sec. 182. Temporary receiver.** If it shall be made to appear to the satisfaction of the court that the corporation is insolvent, the court may at any stage of the proceeding before the final order, on motion of the petitioners on notice to the attorney-general, or on motion of the attorney-general on notice of the corporation, appoint a temporary receiver of the property of the corporation, which receiver shall have all the powers and be subject to all the duties that are defined as belonging to temporary receivers appointed in an action, in section one hundred and four of this chapter. The court may also, in its discretion, at any stage in the proceeding after the appointment of a temporary receiver, upon like motion and notice, confer upon such temporary receiver the powers and authority, and subject him to the duties and liabilities of a permanent receiver, or as much thereof as it thinks proper, except that he shall not make any final distribution among the creditors and stockholders, before final order in the proceedings, unless he is specially directed so to do by the court.

**Sec. 183. Application for appointment of receiver.** Every application made for the appointment of a receiver of a corporation other than applications made by the attorney-general on behalf of the people of the state, shall be made at a special term of the supreme court held in and for the judicial district in which the principal business office of the corporation is located.

**Sec. 184. Injunction.** If a temporary receiver be appointed, the court may, in its discretion, on like motion and notice, with or without security, at any stage of the proceeding before the final order, grant an injunction, restraining the creditors of the corporation, from beginning any action against the said corporation for the recovery of a sum of money, or from taking any further proceedings in such an action theretofore commenced. Such injunction shall have the same effect and be subject to the same provisions of law as if each creditor upon whom it is served was named therein.

**Sec. 185. Referee.** If a referee was not designated in the order to show cause, the court may, in its discretion, appoint a referee when or after the order is returnable.

**Sec. 186. Hearing.** At the time and place specified in the order, or at the time and place to which the hearing is adjourned, the court, or the referee, must hear the allegations and proofs of the parties, and determine the facts.

**Sec. 187. Decision.** The decision of the court, or the report of the referee, must be in writing, and must be made and filed with all convenient speed. It must contain a statement of the effects, credits, and other property, and of the debts and other engagements, of the corporation, and of all other matters, pertaining to its affairs.

**Sec. 188. Use of original papers on hearing.** The court or the referee is entitled to use, upon the hearing, the original petition, and the schedules annexed thereto; and the clerk must transmit them accordingly, upon the written order of the judge, or of the referee. In that case, they must be returned with the decision or report.

**Sec. 189. Amending papers.** The court may, at any stage of the proceedings before final order, on the application of the petitioners, or a majority of them, or on the application of the temporary receiver, grant an order amending the schedules annexed to the original petition, by the insertion of additional items, or by making the statements or inventory fuller and in greater detail than as originally filed with the like effect as though said petition and schedules had been originally presented and filed as amended.

**Sec. 190. Final order.** Where the hearing is before a referee, a motion for a final order must be made to the court, upon notice to each person who has made himself a party to the proceedings, by filing with the clerk, before the close of the hearing, a notice of his appearance, in person or by attorney, specifying a post-office within the state, where such a notice may be served. The notice may be served as prescribed in the code of civil procedure for the service of a paper upon an attorney in an action. Where the hearing was before the court, a motion for a final order may be made immediately, or at such a time and upon such a notice as the court prescribes.

**Sec. 191. Permanent receiver.** Upon an application for a final order, if it appear to the court in a case specified in section one hundred and seventy of this chapter that the corporation is insolvent, or, in a case specified either in that section or in section one hundred and seventy-one and one hundred and seventy-two of this chapter, that for any reason a dissolution of the corporation will be beneficial to the interests of the stockholders and not injurious to the public interests, the court must make a final order dissolving the corporation, and appointing one or more receivers of its property. But in the case of a solvent corporation, the court may, if there is no objection by creditors, dispense with a receiver and provide in the final order for the distribution of the assets. Upon the entry of the order the corporation is dissolved. A receiver appointed under this section shall have all the powers, duties, and liabilities of receivers under article eleven of this chapter.

**Sec. 192. Appointment of director, trustee or other officer or stockholder as receiver.** The court may, in its discretion, appoint a director, trustee, or other officer, or a stockholder of the corporation, a receiver of its property.

**Sec. 193. Certain sales, transfers and judgments void.** A sale, assignment, mortgage, conveyance, or other transfer, of any property of a corporation, made after the filing of a petition as prescribed in this article, in payment of, or as security for, an existing or prior debt, or for any other consideration; or a judgment thereafter rendered against the corporation by confession, or upon the acceptance of an offer, is absolutely void, as against the receiver appointed in the special proceeding, and as against the creditors of the corporation.

**Sec. 194. Omission, defect or default of receiver.** In a proceeding for the voluntary dissolution of a corporation, the court may, in the furtherance of justice, upon notice to the attorney-general, and the attorney-general not objecting, and upon such further notice to creditors or others interested as the court shall direct, which notice may be made by mail upon all persons and corporations not residing or existing within the state, relieve a receiver from any omission, defect or default, in any proceeding or act required by law to be taken or done, or in the giving of any notice required by law to be given, and the court may upon like notice, con-

firm any act of a receiver, and any decision, report, order, or judgment made in such proceeding.

**Sec. 195. Exception of certain corporations.** This article does not apply to an incorporated library society, to a religious corporation, or to a select school or academy, incorporated by the regents of the university or by the legislature, or to a municipal or other political corporation.

## **Article X. Dissolution of stock corporation without judicial proceedings.**

**Sec. 220. Dissolution of stock corporation before beginning business.** The incorporators named in any certificate of incorporation filed for the purpose of creating a domestic stock corporation, other than a moneyed or transportation corporation, may, before the payment of any part of the capital, and before beginning business, surrender all corporate rights and franchises, by signing, verifying and filing in the office of the secretary of state and the clerk of the county where the certificate of incorporation is filed, a certificate setting forth the names of the incorporators, that no part of the capital has been paid, that there are no liabilities, that such business has not been begun and surrendering all rights and franchises; and proof of the facts set forth in such certificate to the satisfaction of the secretary of state; and thereupon the said corporation shall be dissolved, and its corporate existence and power shall cease. In case any incorporator of such a corporation shall be deceased, then the aforesaid certificate may be made by the surviving incorporators providing two years shall have elapsed since the date of its incorporation, but in such case the certificate shall set forth the fact that one or more of said incorporators is deceased.

**Sec. 221. Dissolution of stock corporation before expiration of time limit.** Any stock corporation, except a moneyed or a railroad corporation, may be dissolved before the expiration of the time limited in its certificate of incorporation or in its charter as follows: 1. The board of directors of any such corporation may at a meeting called for that purpose, upon at least three days' notice to each director, by a vote of a majority of the whole board, adopt a resolution that it is in their opinion advisable to dissolve such corporation forthwith, and thereupon shall call a meeting of the stockholders for the purpose of voting upon a proposition that such corporation be forthwith dissolved. Such meeting of the stockholders shall be held not less than thirty nor more than sixty days after the adoption of such resolution, and the notice of the time and place of such meeting so called by the directors shall be published in one or more newspapers published and circulating in the county wherein such corporation has its principal office, at least once a week for three weeks successively next preceeding the time appointed for holding such meeting, and on or before the day of the first publication of such notice, a copy thereof shall be served personally on each stockholder, or mailed to him at his last known post-office address. Such meeting shall be held in the city, town or village in which the last preceeding annual meeting of the corporation was held, and said meeting may, on the day so appointed, by the consent of a majority in interest of the stockholders present, be adjourned from time to time, and notice of such adjournment shall be published in the newspapers in which the notice of the meeting is published. If at any such meeting the holders of two-thirds in amount of the stock of the corporation, then outstanding, shall, in person or by attorney, consent that such dissolution shall take place and signify such consent, in writing, then such corporation shall file such consent, attested by its secretary or treasurer, and its president or vice-president, together with the powers of attorney signed by such stockholders executing such consent by attorney, with a statement of the names and residences of the then existing board of directors of said corporation, and the names and residences of its officers duly verified by the secretary or treasurer or president of said corporation, in the office of the secretary of state. 2. The secretary of state shall thereupon issue to such corporation, in duplicate, a certificate of the filing of such papers and that it appears therefrom that such corporation has complied with this section in order to be dissolved, and one of such duplicate certificates shall be filed by such corporation in the office of the clerk of the county in which such corporation has its principal office; and thereupon such corporation shall be dissolved and shall cease to carry on business, except for the pur-

pose of adjusting and winding up its business. The board of directors shall cause a copy of such certificate to be published at least once a week for two weeks in one or more newspapers published and circulating in the county in which the principal office of such corporation is located, and at the expiration of such publication, the said corporation by its board of directors shall proceed to adjust and wind up its business and affairs with power to carry out its contracts and to sell its assets at public or private sale, and to apply the same in discharge of debts and obligations of such corporation, and, after paying and adequately providing for the payment of such debts and obligations, to distribute the balance of assets among the stockholders of said corporation, according to their respective rights and interests. 3. Said corporation shall nevertheless continue in existence for the purpose of paying, satisfying and discharging any existing debts or obligations, collecting and distributing its assets and doing all other acts required in order to adjust and wind up its business and affairs, and may sue and be sued for the purpose of enforcing such debts or obligations, until its business and affairs are fully adjusted and wound up. 4. After paying or adequately providing for the debts and obligations of the corporation the directors may, with the written consent of the holders of two-thirds in amount of the capital stock, sell the remaining assets or any part thereof to a corporation organized under the laws of this or any other state, and engaged in a business of the same general character, and take in payment therefor the stock or bonds or both of such corporation and distribute them among the stockholders, in lieu of money, in proportion to their interest therein, but no such sale shall be valid as against any stockholder, who, within sixty days after the mailing of notice to him of such sale, shall apply to the supreme court in the manner provided by section seventeen of the stock corporation law, for an appraisal of the value of his interest in the assets so sold; unless within thirty days after such appraisal the stockholders consenting to such sale, or some of them, shall pay to such objecting stockholder or deposit for his account, in the manner directed by the court, the amount of such appraisal and upon such payment or deposit the interest of such objecting stockholder shall vest in the person or persons making such payment or deposit.

### **Article Xa. Provisions applicable to temporary and permanent receivers of corporations.**

**Sec. 225. Security.** A receiver, appointed in an action or special proceeding, must, before entering upon his duties, execute and file with the proper clerk, a bond to the people, with at least two sufficient sureties, in a penalty fixed by the court, judge, or referee, making the appointment, conditioned for the faithful discharge of his duties as receiver; and the execution of any such bond by any fidelity or surety company authorized by the laws of this state to transact business, shall be equivalent to the execution of said bond by two sureties. But this section does not apply to a case where special provision is made by law for the security to be given by a receiver or for increasing the same.

**Sec. 226. Removal or new bond.** The court, or, where the order was made out of court, the judge making the order, by or pursuant to which the receiver was appointed, or his successor in office, may, at any time, remove the receiver, or direct him to give a new bond, with new sureties, with the like condition specified in the last section. But this section does not apply to a case where special provision is made by law for the security to be given by a receiver, or for increasing the same, or for removing a receiver.

**Sec. 227. Notice to sureties upon accounting.** A receiver who, having executed and filed a bond as provided for in section two hundred and twenty-five or section two hundred and twenty-six of this chapter, before presenting his accounts as receiver, must give notice to the surety or sureties on his official bond, of his intention to present his accounts, not less than eight days before the day set for the hearing on said accounting. The same notice must be given to such surety or sureties where the accounting is ordered on the petition of a person or persons other than the receiver, and in no case shall the receiver's accounts be passed, settled or allowed, unless the said notice provided for in this section shall have first been given to the surety or sureties on the official bond of such receiver.



**Article XI. Powers, duties and liabilities of receivers of corporation.**

**Sec. 230. Application of this article.** Unless otherwise provided the provisions of this article shall apply only to permanent receivers appointed pursuant to section one hundred and six or section one hundred and ninety-one of this chapter.

**Sec. 231. Receiver trustee of property.** Permanent receivers shall be trustees of the property for the benefit of the creditors of the corporation and of its stockholders.

**Sec. 232. Receivers title to property.** Such receivers shall be vested with all the property, real and personal, of the corporation, from the time of their having filed the security required by law.

**Sec. 233. Transfer of assets of corporation to receiver.** In all cases where receivers have been or shall be appointed for any corporation of this state other than an insurance company on application by the attorney-general, all property, real and personal, and all securities of every kind and nature belonging to such corporation, no matter where located or by whom held, shall be transferred to, vested in and held by such receiver; provided, however, that such transfer shall only be made when directed by an order of the supreme court, due notice of the application for such order having been made on the attorney-general and the custodian of the funds, securities or property.

**Sec. 234. Security of receiver.** Before entering upon the duties of their appointment, such receivers shall give such security to the people of the state, and in such penalty, as the court shall direct, conditioned for the faithful discharge of the duties of their appointment, and for the due accounting for all moneys received by them.

**Sec. 235. Authority of single receiver.** When one receiver only, shall be appointed, all the provisions herein contained, in reference to several receivers shall apply to him.

**Sec. 236. Authority where there is more than one receiver.** When there are more receivers than one appointed, the debts and property of the corporation may be collected and received by any one of them, and when there are more than two receivers appointed, every power and authority conferred on the receivers may be exercised by any two of them.

**Sec. 237. Surviving receivers.** The survivor or survivors of any receivers shall have all the powers and rights given to receivers. All property in the hands of any receiver at the time of his death, removal or incapacity, shall be delivered to the remaining receiver or receivers, if there be any; or to the successor of the one so dying, removed or incapacitated; who may demand and sue for the same.

**Sec. 238. Oath of receiver.** Before proceeding to the discharge of any of their duties, all such receivers shall take and subscribe an oath, that they will well and truly execute the trust by their appointment reposed in them, according to the best of their skill and understanding; which oath shall be filed with the officer or court, that appointed them.

**Sec. 239. General powers of receivers.** The said receivers shall have power: 1. To sue in their own names or otherwise, and recover all the property, debts and things in action, belonging or due to such corporation in the same manner and with the like effect as such corporation might or could have done if no receivers had been appointed; and no set-off shall be allowed in any such suit, for any debt, unless it was owing to such creditor, by such corporation before the appointment of the receiver of such corporation; notwithstanding the notice to creditors the receivers may sue for and recover, any property or effects of the corporation and any debts due to it, at any time, before the day appointed for the delivery or payment thereof; 2. To take into their hands, all the property of such corporation, whether attached, or delivered to them, or afterwards discovered; and all books, vouchers and securities relating to the same; 3. In the case of a non-resident, absconding or concealed debtor, to demand and receive of every sheriff who shall have attached any of the property of such debtor, or who shall have in his hands, any moneys arising from the sale of such property, all such property and moneys, on paying him his reasonable costs and charges, for attaching and keeping the same, to be allowed by the court having jurisdiction; 4. From time to time, to sell at public auction, all the property, real and personal, vested in them, which shall come to their

hands, after giving at least fourteen days' public notice of the time and place of sale and also publishing the same for two weeks in a newspaper, printed in the county, where the sale shall be made, if there be one; 5. To allow such credit on the sale of real property by them, as they shall deem reasonable, subject to the provisions of this article for not more than three-fourths of the purchase money; which credit shall be secured by a bond of the purchaser, and a mortgage on the property sold; 6. On such sales, to execute the necessary conveyances and bills of sale; 7. To redeem all mortgages and conditional contracts and all pledges of personal property, and to satisfy any judgments, which may be an incumbrance on any property so sold by them; or to sell such property subject to such mortgages, contracts, pledges, or judgments; 8. To settle all matters and accounts between such corporation and its debtors, or creditors, and to examine any person touching such matter and accounts, on oath, to be administered by either of them; 9. Under the order of the court appointing them, to compound with any person indebted to such corporation and thereupon to discharge all demands against such person.

**Sec. 240. Power of receiver to institute proceedings to recover assets.** Whenever any receiver of a domestic corporation, or of the property within this state of any foreign corporation, shall have been appointed and qualified, as provided in articles five, six, seven, nine, eleven, or twelve of this chapter either before, upon, or after final judgment or order in the action or special proceeding in which such appointment was made, and shall, by his own verified petition, affidavit or other competent proof, show to the supreme court, at a special term thereof, held within the judicial district wherein such appointment was made, that he has good reason to believe that any officer, stockholder, agent, or employee of such corporation, or any other person whomsoever, has embezzled or concealed, or withholds or has in his possession or under his control, or has wrongfully disposed of, any property of such corporation which of right ought to be surrendered to the receiver thereof; or that any person can testify concerning the embezzlement, concealment, withholding, possession, control, or wrongful disposition of any such property, the court shall make an order, with or without notice, commanding such person or persons to appear at a time and place to be designated in the order, before the court or before a referee named by the court for that purpose, and to submit to an examination concerning such embezzlement, concealment, withholding, possession, control, or wrongful disposition of such property; and at the time of making such order or at any time thereafter, the court may, in its discretion, enjoin and restrain the person or persons so ordered to appear and be examined from in any manner disposing of any property of such corporation which may be in the possession or under the control of the person so ordered to be examined, until the further order of the court in relation thereto. No person so ordered to appear and be examined shall be excused from answering any question on the ground that his answer might tend to convict him of a criminal offense; but his testimony taken upon such examination shall not be used against him in any criminal action or proceeding.

Any person so ordered to appear and be examined shall be entitled to the same fees and mileage, to be paid at the time of serving the order, as are allowed by law to witnesses subpoenaed to attend and testify in an action in the supreme court, and shall be subject to the same penalties upon failure to appear and testify in obedience to such an order as are provided by law in the case of witnesses who fail to obey a subpoena to appear and testify in an action.

Any person appearing for examination in obedience to such order shall be sworn by the court or referee to tell the truth, and shall be entitled to be represented on such examination by counsel, and may be cross-examined, or may make any voluntary statement in his own behalf concerning the subject of his examination which may seem to him desirable or pertinent thereto.

The court before which such examination is taken, as well as the referee, if one be appointed for that purpose, shall have power to adjourn such examination from time to time, and may rule upon any question or objection arising in the course of such examination, to the same extent that might be done if the person so examined were testifying as a witness in the trial of an action.

When the examination of any person under such order shall be concluded, the testimony shall be signed and sworn to by the person so examined, and shall be filed in the office of the clerk of the county where the action is pending, or was tried, in which the receiver was appointed; and if from such testimony it shall appear

to the satisfaction of the court that any person so examined is wrongfully concealing or withholding, or has in his possession or under his control, any property which of right belongs to such receiver, the court may make an order commanding the person so examined forthwith to deliver the same to such receiver, who shall hold the same subject to the further order of the court in relation thereto; and otherwise, the court may, at the conclusion of any such examination, make such final order in the premises as the interests of justice require.

**Sec. 241. Power of receiver in the settlement of controversies.** If any controversy shall arise between the receivers and any other person, in the settlement of any demands against such corporation, or of debts due to such corporation the same may be referred to one or more indifferent persons, who may be agreed upon by the receivers and the party, with whom such controversy shall exist, by a writing to that effect, signed by them.

If such referee or referees be not selected by agreement, then the receivers or the other party to the controversy, provided no action at law is pending arising out of any such debts or demands, may serve a notice of their intention to apply to any judge of the supreme court at chambers, residing in the same district with said receivers, for the appointment of one or more referees, specifying the time, and place when such application will be made, which notice shall be served at least ten days before the time so therein specified.

On the day so specified, upon due proof of the service of such notice, the judge before whom the application is made may, in his discretion, proceed to select one or more referees, the same in all respects as they are now selected according to the rules and practice of the supreme court.

When any witness to such controversy shall reside out of the county where the said receivers resided at the time of their appointment, the referee or referees appointed to hear said controversy shall have power to issue a commission or commissions in like manner as justices of the peace are now authorized to issue the same, and the testimony so taken shall be returned to said referee or referees in the same manner, and be read before them on a hearing, in like manner as testimony taken on commission before justices of the peace.

The officer before whom they shall be selected, shall certify such selection in writing. Such certificate, or the written agreement of the parties, shall be filed by the receivers in the office of a clerk of the supreme court, and an order shall thereupon be entered by such clerk in vacation or in term, appointing the persons so selected to determine the controversy.

Such referees shall have the same powers, and be subject to the like duties and obligations, and shall receive the same compensation, as referees appointed by the supreme court, in personal actions pending therein.

The report of the referees shall be filed in the same office where the order for their appointment was entered, and shall be conclusive on the rights of the parties, if not set aside by the court.

**Sec. 242. Power of receiver to employ counsel.** If the receiver of a corporation employs counsel he shall within three months after he has qualified as receiver enter into a written contract fixing the compensation of such counsel at not exceeding a certain amount or a certain percentage of the sums received and disbursed by him, which contract must be approved by the supreme court, on at least eight days' notice to the attorney-general. A payment by such receiver to his counsel on account of services shall only be made, pursuant to an order of the court, on notice to the attorney-general and subject to review on the final accounting. A contract with counsel shall not be made for a longer period than eighteen months, but may be renewed from time to time for periods of not more than one year, if approved by the supreme court on at least eight days' notice to the attorney-general. In case of the intervention of any policy-holder or depositor, by permission of the court, such policy-holder or depositor shall defray the legal expenses thereof, and no allowance shall be made for costs or fees to any attorney of such policy-holder or depositor. It shall be unlawful for receivers of an insurance, banking or railroad corporation, or trust company to pay to any attorney or counsel any costs, fees, or allowances until the amounts thereof shall have been stated to the special term as provided in section two hundred and forty-nine of this chapter, as expenses incurred, and shall have been approved by that court, by an order of the court duly entered; and any such order shall be the subject of review by the

appellate division and the court of appeals on an appeal taken therefrom by any party aggrieved thereby.

**Sec. 243. Power of receiver to hold real property.** A receiver, appointed by or pursuant to an order or a judgment, in an action in the supreme court or a county court, or in a special proceeding for the voluntary dissolution of a corporation, may take and hold real property, upon such trusts and for such purposes as the court directs, subject to the direction of the court, from time to time, respecting the disposition thereof.

**Sec. 244. Power of receiver to recover stock subscriptions.** If there shall be any sum remaining due upon any share of stock subscribed in such corporation, the receiver shall immediately proceed to recover the same, unless the person so indebted shall be wholly insolvent; and for that purpose may commence and prosecute any action or proceeding for the recovery of such sum, without the consent of any creditors of such corporation.

**Sec. 245. Duty of receiver to convert assets into money.** The receivers shall, as speedily as possible, convert the property, real and personal, of the corporation into money.

**Sec. 246. Duty of receiver as to private sales.** A receiver duly appointed in this state by and pursuant to a judgment in an action, or by and pursuant to an order in a special proceeding, may, upon application to the court by which such judgment was rendered, or such order was made, and upon notice to such parties as may be entitled to notice of applications made in such action or special proceeding, be authorized by the said court to sell or convey the property, whether real or personal, of the corporation of which he is the receiver, at private sale, upon such terms and conditions as the court may direct.

**Sec. 247. Duty of receiver to keep accounts.** They shall keep a regular account of all moneys received by them as receivers; to which, every creditor, or other person interested therein, shall be at liberty, at all reasonable times, to have recourse.

**Sec. 248. Duty of receiver to serve copy of report upon attorney-general and superintendent of banks.** All receivers of insolvent corporations who are required by law to make and file reports of their proceeding shall at the time of making and filing such reports, serve a copy thereof upon the attorney-general of this state, and receivers of such corporations as report to, and are under the supervision of, the banking department shall on the first day of January and July of each year, during the continuance of their respective trusts, file with the superintendent of banks a report, verified by oath, in such form as the superintendent may prescribe, showing the condition of their respective trusts. In case any receiver of an insolvent corporation shall neglect to make and file a report of his proceedings for thirty days after the time he is required by law to make and file such report, or shall neglect for the same length of time to serve a copy thereof on the attorney-general, as required by this section the attorney-general may make a motion in the supreme court for an order to compel the making and filing and serving a copy on him of such report, or for the removal of such receiver from his office.

**Sec. 249. Duty of certain receivers to make reports.** It shall be the duty of every receiver of an insurance, banking or railroad corporation, or trust company, to present every six months to the special term of the supreme court, held in the judicial district wherein the place of trial or venue of the action or special proceeding in which he was appointed may then be, on the first day of its first sitting, after the expiration of such six months, and to file a copy of the same, if a receiver of a bank or trust company, with the superintendent of banks; if a receiver of an insurance company, with the superintendent of insurance; and in each case with the attorney-general, an account exhibiting in detail the receipts of his trust, and the expenses paid and incurred therein during the preceding six months. Of the intention to present such account, as aforesaid, the attorney-general, and also the surety or sureties on the official bond of such receiver, shall be given eight days' notice in writing; and the attorney-general shall examine the books and accounts of such receiver at least once every twelve months.

**Sec. 250. Duty of receivers to give notice to creditors.** The receivers immediately upon their appointment, shall give notice thereof which shall be published for three weeks in a newspaper printed in the county where the principal place of conducting the business of such corporation shall have been situated; and therein

shall require: 1. All persons indebted to such corporation, by a day and at a place therein to be specified, to render an account of all debts and sums of money owing by them respectively, to such receivers and to pay the same; 2. All persons having in their possession any property or effects of such corporation to deliver the same to the said receivers by the day so appointed; 3. All the creditors of such corporation to deliver their respective accounts and demands to the receivers or one of them, by a day to be therein specified, not less than forty days from the first publication of such notice; 4. All persons holding any open or subsisting contract of such corporation, to present the same in writing and in detail to such receivers, at the time and place in such notice specified.

**Sec. 251. Delivery of property and payment of debts to receiver after notice.** After the first publication of the notice of the appointment of receivers, every person having possession of any property belonging to such corporation, and every person indebted to such corporation, shall account and answer for the amount of such debt and for the value of such property to the said receivers.

**Sec. 252. Penalty for concealing property from receiver.** Every person indebted to such corporation, or having the possession or custody of any property or thing in action, belonging to it, who shall conceal the same, and not deliver a just and true account of such indebtedness, or not deliver such property or thing in action, to the receivers, or one of them, by the day for that purpose appointed, shall forfeit double the amount of such debt, or double the value of such property so concealed; which penalties may be recovered by the receivers.

**Sec. 253. Duty of receiver to call creditors' meeting.** They shall call a general meeting of the creditors of such corporation, within four months from the time of their appointment by a notice to be published in the same manner, as hereinbefore directed respecting the publication of the notice of their appointment; in which notice, they shall specify the place and time of such meeting, which time shall not be more than three months, nor less than two months after the first publication of such notice. Every such notice shall be published at least once in each week, until the time of such meeting.

**Sec. 254. Proceedings at creditors' meeting.** At such meeting, or other adjourned meeting thereafter, all accounts and demands for and against such corporation, and all its open and subsisting contracts, shall be ascertained and adjusted as far as may be, and the amount of moneys in the hands of the receivers declared.

**Sec. 255. Deduction of disbursements and commissions by receiver.** Out of the moneys in their hands the receivers may first deduct all the necessary disbursements made by them in the discharge of their duty and such commissions as may be allowed by law.

**Sec. 256. Refunding consideration of subsisting contracts.** If there shall be any open and subsisting engagements or contracts of such corporation, which are in the nature of insurances or contingent engagements of any kind, the receivers may, with the consent of the party holding such engagement, cancel and discharge the same, by refunding to such party the premium or consideration paid thereon by such corporation, or so much thereof as shall be in the same proportion to the time which shall remain of any risk assumed by such engagement, as the whole premium bore to the whole term of such risk; and upon such amount being paid by such receivers to the person holding or being the legal owner of such engagement, it shall be deemed canceled and discharged as against such receivers.

**Sec. 257. Retention of funds for subsisting contracts and pending suits.** The receivers shall retain out of the moneys in their hands, a sufficient amount to pay the sums, which they are hereinbefore authorized to pay, for the purpose of canceling and discharging any open or subsisting engagements. If any suit be pending against the corporation or against the receivers, for any demand, the receivers may retain the proportion which would belong to such demand if established, and the necessary costs and proceedings, in their hands, to be applied according to the event of such suit, or to be distributed in a second or other dividend.

**Sec. 258. Payment of debts not due.** Every person to whom a corporation shall be indebted on a valuable consideration, for any sum of money not due at the time of such distribution, but payable afterwards, shall receive his proportion with other creditors, after deducting a rebate of legal interest upon the sum distributed, for the time unexpired of such credit.

**Sec. 259. Allowance of set-offs.** Where mutual credit has been given by any corporation, and any other person, or mutual debts have subsisted between such corporation and any other person, the receivers may set off such credits or debts, and pay the proportion or receive the balance due. But no set-off shall be allowed of any claim or debt, which would not have been entitled to a dividend, as herein-before directed.

No set-off shall be allowed by such receivers, of any claim or debt, which shall have been purchased by, or transferred to, the person claiming its allowance, which could not have been set off by him, in a suit brought by such receivers.

**Sec. 260. Penalties recovered by receiver.** All penalties which shall be recovered by any receivers, pursuant to the provisions of this article, shall be deemed a part of the property of the corporation, and shall be distributed as such among its creditors.

**Sec. 261. Order of payment by receiver.** The receivers shall distribute the residue of the moneys in their hands, among all those who shall have exhibited their claims as creditors, and whose debts shall have been ascertained, as follows: 1. All debts due by such corporation to the United States, and all debts entitled to a preference under the laws of the United States; 2. All debts that may be owing by the corporation as guardian, executor, administrator, or trustee; and if there be not sufficient to pay all debts of the character above specified, then a distribution shall be made among them, in proportion to their amounts respectively; 3. Judgments actually obtained against such corporation, to the extent of the value of the real estate on which they shall respectively be liens; 4. All other creditors of such corporation, in proportion to their respective demands, without giving any preference to debts due on specialties.

**Sec. 262. Failure to file claim before first dividend.** Every creditor who shall have neglected to exhibit his demand before the first dividend, and who shall deliver his account to the receivers before the second dividend, shall receive the sum he would have been entitled to on the first dividend, before any distribution be made to the other creditors.

**Sec. 263. Second dividend by receiver.** If the whole of the property of such corporation be not distributed on the first dividend, the receivers shall, within one year thereafter, make a second dividend of all the moneys in their hands, among the creditors entitled thereto; of which, and that the same will be a final dividend, three weeks' notice shall be inserted once in each week in a newspaper printed in the county where the principal place of business of such corporation was situated.

Such second dividend shall be made in all respects in the same manner as herein prescribed in relation to the first dividend, and no other shall be made thereafter among the creditors of such corporation, except to the creditors having suits against it, or against the receivers, pending at the time of such second dividend, and except of the moneys which may be retained to pay such creditors, as herein provided.

**Sec. 264. Surplus to stockholders.** If after the second dividend is made, there shall remain any surplus in the hands of the receivers, they shall distribute the same among the stockholders of such corporation, in proportion to the respective amounts paid in by them, severally, on their shares of stock.

**Sec. 265. Disposition of moneys retained by receiver for suits.** When any suit pending at the time of the second dividend shall be terminated, they shall apply the moneys retained in their hands for that purpose, to the payment of the amount recovered, and their necessary charges and expenses; and if nothing shall have been recovered, they shall distribute such moneys, after deducting their expenses and costs, among the creditors and stockholders of the corporation, in the same manner as herein directed in respect to a second dividend.

**Sec. 266. Duty of receiver as to unclaimed dividend.** If any dividend that shall have been declared, shall remain unclaimed by the person entitled thereto for one year after the same was declared, the receivers shall consider it as relinquished, and shall distribute it, on any subsequent dividend, among the other creditors.

**Sec. 267. Effect of failure to file claim before second dividend.** After such second dividend shall have been made, the receivers shall not be answerable to any creditor of such corporation, or to any person having claims against such cor-

poration, by virtue of any open or subsisting engagement, unless the demands of such creditors shall have been exhibited, and the engagements upon which such claims are founded, shall have been presented to the said receivers, in detail and in writing, before or at the time specified by them in their notice of a second dividend.

**Sec. 268. Final accounting by receiver.** A receiver shall apply within one year after qualifying as such for a final settlement of his accounts and an order for distribution, or shall apply to the court upon notice to the attorney-general for an extension of time, setting forth the reasons why he is unable to close his accounts, which order may be granted in the discretion of the court. The attorney-general or any creditor, or any party interested, may apply for an order that the receiver show cause why an accounting and distribution shall not be had at any time after the expiration of one year after the receiver qualifies; and it shall be the duty of the attorney-general after the expiration of eighteen months from the time the receiver enters upon his duties, in case he has not applied for a final settlement of his accounts, to apply for such an order on notice to such receiver. In case of such application by a party other than the receiver the court shall direct the receiver to take steps to account with all convenient speed. The receiver is not required or authorized to file any account, except as herein provided, except by special order of the court.

**Sec. 269. Notice of final accounting.** Previous to rendering such account the receivers shall insert a notice of their intention to present the same, once in each week, for three weeks, in a newspaper, of the county in which notices of dividends are herein required to be inserted, specifying the time and place at which such account will be rendered. Said receivers shall also give notice to the sureties on their official bonds, as provided in section two hundred and twenty-seven of this chapter.

**Sec. 270. Hearing on final accounting.** Upon the coming in of such report the court shall hear the allegations of all concerned therein, and shall allow or disallow such account, and decree the same to be final and conclusive upon all the creditors of such corporation, upon all persons who have claims against it, upon any open or subsisting engagement, and upon all the stockholders of such corporation.

**Sec. 271. Reference of final account.** The referee to whom such account shall be referred, shall hear and examine the proofs, vouchers, and documents offered for or against such account, and shall report thereon fully to the court.

**Sec. 272. Further accounting.** Such receivers shall also account from time to time in the same manner, and with the like effect, for all moneys which shall come to their hands after the rendering of such account, and for all moneys which shall have been retained by them for any of the purposes hereinbefore specified, and shall pay into court all unclaimed dividends.

**Sec. 273. Removal of receiver.** Such receivers may be removed by the court.

**Sec. 274. Vacancy.** Any vacancy created by removal, death, or otherwise, may be supplied by the court.

**Sec. 275. Renunciation by receiver.** Any receiver who shall be desirous of renouncing the trust vested in him, may apply to the court from whom his appointment was received, for an order to all persons interested, to show cause why such renunciation should not be accepted.

Such application shall be accompanied by a full, true and just account of all the transactions of such receiver, and particularly of the property, moneys, and effects received by him; of all payments made, whether to creditors or otherwise; and of the remaining effects and property of the corporation, in respect to which he was appointed receiver, within his knowledge, and the situation of the same.

To such account shall be annexed the affidavit of the receiver, that the said account is in all respects just and true, according to the best of his knowledge and belief; which affidavit shall be subscribed and sworn to, before the court, to whom the application is made, and shall be certified by the clerk of the court.

Such court, shall thereupon grant an order, directing notice to be given to all persons interested in the property of the corporation, in respect to which such receiver was appointed, to show cause on a day or at a term and at a place therein to be specified, why he should not be permitted to renounce his appointment.

Such notice shall be published, once in each week, for six weeks successively in such newspapers, as such court shall direct.

On the day appointed for such hearing, and on such other days as shall from time to time be appointed, if it shall appear that notice was duly published, the court shall proceed to hear the proofs and allegations of the parties.

If it shall appear that the proceedings of such receiver, in relation to his trust, have been fair and honest, and particularly in the collection of the property and debts vested in him; and if such court be satisfied that for any reason it is inexpedient for such receiver to continue in the execution of the duties of his appointment, and that such duties can be executed by another receiver, without injury to the property of the corporation, or to the creditors; and if no good cause to the contrary appear, such court shall grant an order, allowing such receiver to renounce his appointment.

Upon such order being granted, such receiver shall be discharged from the trust reposed in him, and his power and authority shall thereupon cease; but he shall, notwithstanding, remain subject to any liability he may have incurred, at any time previous to the granting of such order, in the management of his trust.

The expense of all proceedings in effecting such renunciation shall be paid by the receiver making the application.

**Sec. 276. Control of receiver by court.** The receivers shall be subject to the control of the court and may be compelled to account at any time.

**Sec. 277. Commissions and expenses of receiver in voluntary dissolution.** A receiver appointed pursuant to article nine is entitled, in addition to his necessary expenses, to commissions upon the sums received and disbursed by him as the court by which or the judge by whom he is appointed allows, as follows: On the first twenty thousand dollars not exceeding five per centum; on the next eighty thousand dollars, not exceeding two and one-half per centum; and on the remainder, not exceeding one per centum; but in case the commissions of a receiver so computed shall not amount to one hundred dollars, said court or judge may in his or its discretion allow said receiver such a sum not exceeding one hundred dollars for his commissions as shall be commensurate with the services rendered by said receiver.

**Sec. 278. Commissions and expenses of receiver except in voluntary dissolution.** A receiver of a corporation, except a receiver appointed in proceedings for its voluntary dissolution, is entitled, in addition to his necessary expenses, to such commissions, not exceeding two and one-half per centum upon the sums received and disbursed by him, as the court by which or the judge by whom he is appointed allows, but except upon a final accounting such a receiver shall not receive on account of his services for any one year a greater amount than twelve thousand dollars, nor for any period less than a year more than at that rate. Upon final accounting, the court may make an additional allowance to such receiver, not exceeding two and one-half per centum upon the sums received and disbursed by him, if the court is satisfied that he has performed services that fairly entitle him to such additional allowance. Where more than one receiver shall be appointed, the compensation herein provided shall be divided between said receivers.

## **Article XII. Provisions applicable to two or more of the foregoing proceedings or actions.**

**Sec. 300. Application of preceding articles to certain corporations.** Articles fifth, sixth or seventh of this chapter do not apply to a religious corporation; or to a municipal or other political corporation, created by the constitution, or by or under the laws of this state; or to any corporation which the regents of the university have power to dissolve, except upon the application of the regents, or of the trustees of such a corporation; and in aid of its liquidation under such dissolution.

**Sec. 301. Officers and agents may be compelled to testify in certain actions.** In an action, brought as prescribed in article fifth, sixth or seventh, a stockholder, officer, alienee, or agent of a corporation, is not excused from answering a question, relating to the management of the corporation, or the transfer or disposition of its property, on the ground that his answer may expose the corporation to a forfeiture of any of its corporate rights, or will tend to convict him of a criminal offense, or to subject him to a penalty or forfeiture. But his testimony shall not be used, as evidence against him, in a criminal action or special proceeding.

**Sec. 302. Injunction staying actions by creditors in certain actions.** In such an action, the court may, in its discretion, on the application of either party, at any



stage of the action, before or after final judgment, and with or without security, grant an injunction order, restraining the creditors of the corporation from bringing actions against the defendants, or any of them, for the recovery of a sum of money, or from taking any further proceedings in such actions, theretofore commenced. Such an injunction has the same effect, and, except as otherwise expressly prescribed in this section, is subject to the same provisions of law, as if each creditor, upon whom it is served, was named therein, and was a party to the action in which it is granted.

**Sec. 303. Creditors of corporation may be brought in to prove their claims in certain actions.** In such an action, the court may, at any stage of the action, before or after final judgment, make an order requiring all the creditors of the corporation to exhibit and prove their claims, and thereby make themselves parties to the action, in such a manner, and in such a reasonable time, not less than six months from the first publication of notice of the order as the court directs; and that the creditors, who make default in so doing, shall be precluded from all benefit of the judgment, and from any distribution which may be made thereunder, except as hereinafter provided. Notice of the order must be given by publication, in such newspapers, and for such a length of time, as the court directs. Notwithstanding such order any such creditor who shall exhibit and prove his claim in the manner directed thereby, with proof, by affidavit or otherwise, that he has had no notice or knowledge thereof in time to comply therewith, any time before an order is made directing a final distribution of the assets of such corporation, shall be entitled to have his claim received, and shall have the same rights and benefits thereon, so far as the assets of such corporation then remaining undistributed may render possible, as if his claim had been exhibited and proved within the time limited by such order.

**Sec. 304. When attorney-general must bring certain actions.** Where the attorney general has good reason to believe, that an action can be maintained in behalf of the people of the state, as prescribed in articles fifth, sixth, or seventh of the chapter, except section one hundred and thirty of this chapter, he must bring an action accordingly, or apply to a competent court for leave to bring an action, as the case requires; if, in his opinion, the public interests require that an action should be brought. In a case where the action can be brought only by the attorney-general in behalf of the people, if a creditor, stockholder, director, or trustee of the corporation, applies to the attorney-general for that purpose, and furnishes the security required by law, the attorney-general must bring the action, or apply for leave to bring it, if he has good reason to believe, that it can be maintained. Where such an application is made section nineteen hundred and eighty-six of the code of civil procedure applies thereto, and to the action brought in pursuance thereof.

**Sec. 305. Requisites of injunction against corporations in certain cases.** An injunction order, suspending the general and ordinary business of a corporation, or suspending from office, or restraining from the performance of his duties, a trustee, director, or other officer thereof, can be granted only by the court, upon notice of the application therefor, to the proper officer of the corporation, or to the trustee director, or other officer enjoined. If such an injunction order is made, otherwise than as prescribed in this section, it is void.

**Sec. 306. Appointment of receivers of property of corporations.** A receiver of the property of a corporation can be appointed only by the court, and in one of the following cases: 1. An action, brought as prescribed in articles fifth, sixth, or seventh of this chapter; 2. An action brought for the foreclosure of a mortgage upon the property, of which the receiver is appointed, where the mortgage debt, or the interest thereupon, has remained unpaid, at least thirty days after it was payable, and after payment thereof was duly demanded of the proper officer of the corporation and where either the income of the property is specifically mortgaged, or the property itself is probably insufficient to pay the mortgage debt; 3. An action brought by the attorney-general, or by a stockholder, to preserve the assets of a corporation, having no officer empowered to hold the same; 4. A special proceeding for the voluntary dissolution of a corporation; 5. Upon the application of the regents of the university, in aid of the liquidation of a corporation whose dissolution they contemplate or have decreed; or upon the application of the trustees of such a corporation, with notice to the regents.

Where the receiver is appointed in an action, otherwise than by or pursuant to a final judgment, notice of the application for his appointment must be given to the proper officer of the corporation.

**Sec. 307. Judicial suspension or removal of officer of corporation.** A trustee, director, or other officer of a corporation shall not be suspended or removed from office, by a court or judge, otherwise than by the final judgment of a competent court, in an action brought by the attorney-general, as prescribed in section ninety of this chapter.

**Sec. 308. Application of the last three sections.** The last three sections apply to an action or special proceeding, against a corporation created by or under the laws of the state, or a trustee, director, or other officer thereof; or against a corporation created by or under the laws of another state, government, or country, or a trustee, director, or other officer thereof, where the corporation does business within the state, or has, within the state, a business agency or a fiscal agency, or an agency for the transfer of its stock.

**Sec. 309. Misnomer not available in action against stockholder.** Where an action, authorized by a law of the state, is brought against one or more persons, as stockholders of a corporation, an objection to any of the proceedings can not be taken, by a person properly made a defendant in the action on the ground that the plaintiff has joined with him, as a defendant in the action, a person, whose name appears on the stock-books of the corporation, as a stockholder thereof, by the name so appearing; but who is misnamed, or dead, or is not liable for any cause. In such a case, the court may, at any time before final judgment, upon motion of either party, amend the pleadings and other papers, without prejudice to the previous proceedings, by substituting the true name of the person intended, or by striking out the name of the person who is dead, or not liable, and, in a proper case, inserting the name of his representative or successor.

**Sec. 310. Appraisal of property of insolvent corporation.** Whenever by reason of the provisions of any law of this state it shall become necessary to appraise in whole or in part the property of any corporation in the hands of a receiver or otherwise, the persons whose duty it shall be to make such appraisal shall value the real estate at its full and true value, taking into consideration actual sales of neighboring real estate similarly situated during the year immediately preceding the date of such appraisal, if any; and they shall value all such property, stocks, bonds, or securities as are customarily bought or sold in open markets in the city of New York or elsewhere, for the day on which such appraisal or report may be required, by ascertaining the range of the market and the average of prices as thus found, running through a reasonable period of time.

**Sec. 311. Application by attorney-general for removal of receiver and to facilitate closing affairs of receivership.** The attorney-general may, at any time he deems that the interests of the stockholders, creditors, policy-holders, depositors, or other beneficiaries interested in the proper and speedy distribution of the assets of any insolvent corporation will be subserved thereby, make a motion in the supreme court at a special term thereof, in any judicial district: 1. For an order removing the receiver of any insolvent corporation and appointing a receiver thereof in his stead, or, 2. To compel him to account, or, 3. For such other and additional order or orders as to him may seem proper to facilitate the closing up of the affairs of such receivership, and any appeal from any order made upon any motion under this section shall be to the appellate division of the department in which such motion is made.

**Sec. 312. Service of papers upon attorney-general.** A copy of all motions and all motion papers, and a copy of any other application to the court, together with a copy of the order or judgment to be proposed thereon to the court, in every action or proceeding for the dissolution of a corporation or a distribution of its assets, shall, in all cases, be served on the attorney-general, in the same manner as provided by law for the service of papers on attorneys who have appeared in actions, whether the applications but for this section would be ex parte or upon notice, and no order or judgment granted shall vary in any material respect from the relief specified in such copy, order or judgment, unless the attorney-general shall appear on the return day and shall have been heard in relation thereto; and any order or judgment granted in any action or proceeding aforesaid, without such service of such papers upon the attorney-general, shall be void, and no receiver of any such cor-

poration shall pay to any person any money directed to be paid by any order or judgment made in any such action or proceeding, until the expiration of eight days after a certified copy of such order or judgment shall have been served as aforesaid upon the attorney-general.

**Sec. 313. Designation of depositories of funds in order appointing receiver.** All orders appointing receivers of corporations shall designate therein one or more places of deposit, wherein all funds of the corporation not needed for immediate disbursement shall be deposited and no deposits or investments of such trust funds shall be made elsewhere, except upon the order of the court upon due notice given to the attorney-general.

**Sec. 314. Application to the court in certain actions and proceedings.** All applications to the court shall be made in the judicial district where the principal office of the corporation against which proceedings are taken is located, excepting such applications as are made in actions brought by the attorney-general on behalf of the people of the state, and all such applications shall be made in the judicial district in which the action is triable.

**Sec. 315. County wherein action may be brought by attorney-general on behalf of the people.** An action or proceeding brought by the attorney-general on behalf of the people of the state against any corporation for the purpose of procuring its dissolution, the appointment of a receiver, or the sequestration of its property, may be brought in any county of the state, to be designated by the attorney-general.

**Sec. 316. Preferences in actions or proceedings by or against receivers.** All actions or other legal proceedings and appeals therefrom or therein brought by or against a receiver of any of the insolvent corporations referred to, in this chapter, shall have a preference upon the calendars of all courts next in order to actions or proceedings brought by the people of the state of New York.

### **Article XIII. Alteration and repeal of charter of corporation.**

**Sec. 320. Alteration and repeal of charter.** The charter of every corporation shall be subject to alteration, suspension and repeal, in the discretion of the legislature.

**Sec. 321. Conflicting corporate laws.** If in any corporate law there is or shall be any provision in conflict with any provisions of this chapter or of the stock corporation law, the provisions so conflicting shall prevail, and the provision of this chapter or of the stock corporation law with which it conflicts shall not apply in such a case. If in any such law there is or shall be a provision relating to a matter embraced in this chapter or in the stock corporation law, but not in conflict with it, such provision in such other law shall be deemed to be in addition to the provision in this chapter or in the stock corporation law relating to the same subject-matter, and both provisions shall, in such case, be applicable.

## **Joint-Stock Association Law.**

**Cons. Laws, 1909, c. 34. Chapter Twenty-nine of the Consolidated Laws.**

### **Article I. Short title; definitions.**

**Sec. 1. Short title.** This chapter shall be known as the "Joint-Stock Association Law."

**Sec. 2. Definitions.** As used in this chapter, the term "joint-stock association" includes every unincorporated joint-stock association, company, or enterprise having written articles of association and capital stock divided into shares, but does not include a corporation; and the term "stockholder" includes every member of such an association.

### **Article II. General provisions.**

**Sec. 3. Contents of articles of association.** The articles of association of a joint-stock association may: 1. Provide that the death of a stockholder thereof, or the transfer of his shares of stock therein, shall not work a dissolution of the association; 2. Prescribe the number of its directors, not less than three, to have the sole management of its affairs; 3. Contain any other provision for the management of its affairs not inconsistent with law.

**Sec. 4. Certificate to be filed within sixty days and annually thereafter; penalty; evidence.** Every joint-stock association transacting business within this state shall, within sixty days after its formation, and in each January thereafter, file with the secretary of state, and with the clerk of the county in which its principal business is carried on, a written certificate, signed and verified by its president and treasurer, stating the name and date of organization of such association, the number of its stockholders, the names and places of residence of its officers, and its principal place of business. Such certificates shall be recorded in such offices respectively. Any such certificate, the record thereof, or a certified copy of such certificate or record shall be presumptive evidence of the truth of all facts therein stated against such association, its officers and stockholders. The officers of a joint-stock association who fail to comply with the provisions of this section shall be jointly and severally liable to pay to the people of this state a penalty of fifty dollars for each day such failure continues.

**Sec. 5. Dissolution.** A joint-stock association shall not be dissolved except in pursuance of its articles of association, or by consent of all its stockholders, or by judgment of a court for fraud in its management, or for good cause shown.

**Sec. 6. Power to take and convey real property.** A joint-stock association, in the name of its president, as such president, may purchase, take, hold, and convey such real property only: 1. As may be necessary for its immediate accommodation in the convenient transaction of its business; 2. As may be mortgaged to it in good faith by way of security for loans made by or moneys due to it; 3. As it may purchase at sales under judgments, decrees, or mortgages held by it.

**Sec. 7. Changing articles of association.** Any change in the articles of association of a joint-stock association not inconsistent with law may be made with the consent of all its stockholders, or otherwise, as the articles of association may provide. Unless the articles of association of a joint-stock association contain provisions to the contrary, its directors may be increased or reduced to not less than three; its capital stock may be increased or reduced; or the term of its existence may be extended, with the consent of its stockholders owning at least two-thirds of its stock issued and outstanding, on the following terms and conditions: The consent of the requisite number of stockholders must be given by vote, or by writing presented and filed, at a regular or regularly called special meeting. Notice of the time and place of such meeting, with notice of the proposed change, must be personally served on each stockholder of the association at least thirty days before the meeting, or by mailing it to such stockholder at his last-known post-office address at least sixty days before the meeting. The amount of its capital stock shall not be reduced below the amount of its paid-up capital stock, nor shall it be reduced if the liabilities of the association exceed its assets.

**Sec. 8. Proceeding to mortgage, lease or sell real estate.** Whenever any joint-stock association is required by law to make application to the court for leave to mortgage, lease, or sell its real estate, the proceeding therefor shall be had as prescribed for corporations in article four of the general corporation law.

## Stock Corporation Law.

**Cons. Laws, 1909, c. 61. An Act relating to Stock Corporations,  
constituting Chapter Fifty-nine of the Consolidated Laws.**

### Article I. Short title.

**Sec. 1. Short title.** This chapter shall be known as the "Stock Corporation Law."

### Article II. General provisions.

**Sec. 5. Application of article.** This article except sections eight, fifteen, seventeen, and eighteen thereof, shall not apply to moneyed corporations.

**Sec. 6. Power to borrow money and mortgage property.** In addition to the powers conferred by the general corporation law, every stock corporation shall have the power to borrow money and contract debts, when necessary for the transaction of its business, or for the exercise of its corporate rights, privileges, or franchises, or for any other lawful purpose of its incorporation; and it may issue and dispose

of its obligations for any amount so borrowed, and may mortgage its property and franchises to secure the payment of such obligations, or of any debt contracted for said purposes. Every such mortgage, except purchase-money mortgages and mortgages authorized by contracts made prior to May first, eighteen hundred and ninety-one, shall be consented to by the holders of not less than two-thirds of the capital stock of the corporation, which consent shall be given either in writing or by vote at a special meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or a vice-president and by the secretary or an assistant secretary, of the corporation, and shall be filed and recorded in the office of the clerk or register of the county wherein the corporation has its principal place of business. When authorized by like consent, the directors under such regulations as they may adopt, may confer on the holder of any debt or obligation, whether secured or unsecured, evidenced by bonds of the corporation the right to convert the principal thereof, after two and not more than twelve years from the date of such bonds, into stock of the corporation; and if the capital stock shall not be sufficient to meet the conversion when made, the directors shall from time to time, authorize an increase of capital stock sufficient for that purpose by causing to be filed in the office of the secretary of state, and a duplicate thereof in the office of the clerk of the county where the principal place of business of the corporation shall be located, a certificate under the seal of the corporation, subscribed and acknowledged by the president and secretary of the corporation setting forth: 1. A copy of such mortgage; or resolution of directors authorizing the issue of such bonds; 2. That the holders of not less than two-thirds of the capital stock of the corporation duly consented to the execution of such mortgage or resolution of directors authorizing the issue of such bonds by such corporation; 3. A copy of the resolution of the directors of the corporation authorizing the increase of the capital stock of the corporation necessary for the purpose of such conversion; 4. The amount of capital theretofore authorized, the proportion thereof actually issued and the amount of the increased capital stock.

If the corporation be a railroad corporation the certificate shall have endorsed thereon the approval of the public service commission having jurisdiction thereof. When the certificate herein provided for has been filed, the capital stock of such corporation shall be increased to the amount specified in such certificate.

**Sec. 7. Validating corporate mortgages.** Whenever any mortgage affecting property or franchises within this state heretofore or hereafter executed by authority of the board of directors in behalf of any stock corporation, domestic or foreign, of any description, recites or represents in substance or effect that the execution of such mortgage has been duly consented to, or authorized by stockholders, such recital or representation in any such mortgage, after public record thereof within this state shall be presumptive evidence that the execution of such mortgage has been duly and sufficiently consented to, and authorized by stockholders as required by any provision of law. After any such mortgage heretofore or hereafter shall have been publicly recorded for more than one year in one or more of the counties of this state containing the mortgaged premises or any part thereof, and the corporation shall have received value for bonds actually issued under and secured by such mortgage, and interest shall have been paid on any of such bonds according to the terms thereof, such recital or representation of such mortgage so recorded shall be conclusive evidence that the execution of such mortgage has been duly and sufficiently consented to, and authorized by stockholders as required by any provision of law, and its validity shall not be impaired by reason of any defect or insufficiency of consent or authority of stockholders or in filing or recording such consent or authority, and such mortgage shall be valid and binding upon the corporation, and those claiming under it, as security for all valid bonds issued or to be issued thereunder, unless such mortgage shall be adjudged invalid in an action begun as hereinafter, in this section, provided. Notwithstanding the foregoing provisions of this section, the invalidity of any such mortgage heretofore recorded because of insufficiency of consent by stockholders may be adjudged in any action for such purpose begun before the first day of April, nineteen hundred and two, and the invalidity of any such mortgage hereafter recorded, because of insufficiency

of consent by stockholders, may be adjudged in any action for such purpose begun, within one year after the earliest record of such mortgage in any county in this state, provided in either case that such action shall have been so begun by or in behalf of the corporation by direction of the board of directors acting in their own discretion, or upon the written request of the holders of not less than one-third of the capital stock of the corporation; and in any such action so begun by or in behalf of the corporation, the recitals or representations of the mortgage shall be presumptive evidence only as first above provided. Whenever hereafter, in compliance with any law of this state, the officers of any corporation shall have made and filed and recorded a certificate that the execution of a mortgage hereafter made by the corporation has been duly consented to by stockholders, such certificate shall be conclusive evidence as to the truth thereof, in favor of any and all persons who in good faith shall receive or purchase, for value, any bond or obligation purporting to be secured by such mortgage, at any time when said certificate shall remain of record and unanceled. Nothing in this section contained shall affect any right or any remedy in respect of any such right of any creditor accrued before this enactment nor shall it dispense with the necessity of obtaining the consent of the public service commission having jurisdiction thereof to any mortgage by a railroad corporation.

**Sec. 8. Power to guarantee bonds of other corporations.** Any stock corporation may, in pursuance of a unanimous vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation stating the time and place and object of the meeting and served upon each stockholder appearing as such upon the books of the corporation, personally or by mail at his last-known post-office address at least sixty days prior to such meeting, guarantee the bonds of any other domestic corporation engaged in the same general line of business; and any stock corporation owning the entire capital stock of any other domestic stock corporation engaged in the same general line of business may in pursuance of a two-thirds vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation, stating the time and place and object of the meeting and served upon each stockholder appearing as such upon the books of the corporation personally, or by mail, at his last-known post-office address, at least sixty days prior to such meeting, guarantee the bonds of such other corporation.

**Sec. 9. Reorganization upon sale of corporate property and franchises.** When the property and franchises of any domestic stock corporation shall be sold by virtue of a mortgage or deed of trust, duly executed by it, or pursuant to the judgment or decree of a court of competent jurisdiction, or by virtue of any execution issued thereon, and the purchaser, his assignee or grantee shall have acquired title to the same in the manner prescribed by law, he may associate with him any number of persons, not less than the number required by law for an incorporation for similar purposes at least two-thirds of whom shall be citizens of the United States and one shall be a resident of this state, and they may become a corporation and take and possess the property and franchises thus sold, and which were at the time of the sale possessed by the corporation whose property shall have been so sold, upon making and acknowledging and filing in the offices where certificates of incorporation are required by law to be filed, a certificate in which they shall describe by name and reference to the law under which it was organized, the corporation whose property and franchises they have acquired, and the court by whose authority the sale had been made, with the date of the judgment or decree authorizing or directing the same, and a brief description of the property sold, and also the following particulars: 1. The name of the new corporation intended to be formed by the filing of such certificate; and the place where its principal office is to be located; 2. The maximum amount of its capital stock and the number of shares into which it is to be divided, specifying the classes thereof, whether common or preferred, and the amount of and rights pertaining to each class; 3. The number of directors, not less nor more than the number required by law for the old corporation, who shall manage the affairs of the new corporation, and the names and post-office addresses of the directors for the first year. They may insert in such certificate any provisions relating to the new corporation, or its management, contained in any plan or agreement which may have been entered into as provided in section ten of this chapter. Such corporation shall be vested with, and be entitled to exercise and enjoy, all the

rights, privileges, and franchises, which at the time of such sale belonged to, or were vested in the corporation last owning the property sold, or its receiver, and shall be subject to all the provisions, duties, and liabilities imposed by law on that corporation. Any proceedings heretofore taken in substantial compliance with this section as hereby amended and any and all incorporations based thereon are hereby ratified and confirmed.

**Sec. 10. Contents of plan or agreement.** At or previous to the sale the purchasers thereat, or the persons for whom the purchase is to be made, may enter into a plan or agreement, for or in anticipation of the readjustment of the respective interests therein of any creditors, mortgagees, and stockholders, or any of them, of the corporation owning such property and franchises at the time of sale, and for the representation of such interests in the bonds or stock of the new corporation to be formed, and may therein regulate voting by the holders of the preferred and common stock at any meeting of the stockholders, and may provide for, and regulate voting by the holders, and owners of any or all of the bonds of the corporation, foreclosed, or of the bonds issued or to be issued by the new corporation; and such right of voting by bondholders shall be exercised in such manner, for such period, and upon such conditions, as shall be therein described. Such plan or agreement must not be inconsistent with the laws of the state and shall be binding upon the corporation, until changed as therein provided, or as otherwise provided by law. The new corporation when duly organized, pursuant to such plan or agreement and to the provisions of law, may issue its bonds and stock in conformity with the provisions of such plan or agreement, and may at any time within six months after its organization, compromise, settle or assume the payment of any debt, claim or liability of the former corporation upon such terms as may be lawfully approved by a majority of the agents or trustees intrusted with the carrying out of the plan or agreement of reorganization, and may establish preferences in favor of any portion of its capital stock and may divide its stock into classes; but the capital stock of the new corporation shall not exceed in the aggregate the maximum amount of stock mentioned in the certificate of incorporation.

**Sec. 11. Sale of property; possession of receiver and suits against him.** The supreme court may direct a sale of the whole of the property, rights and franchises covered by the mortgage or mortgages, or deeds of trust foreclosed at any one time and place to be named in the judgment or order, either in case of the non-payment of interest only, or of both the principal and interest due and unpaid and secured by any such mortgage or mortgages or deeds of trust. Neither the sale nor the formation of the new corporation shall interfere with the authority or possession of any receiver of such property and franchises, but he shall remain liable to be removed or discharged at such time as the court may deem proper. No suit or proceeding shall be commenced against such receiver unless founded on wilful misconduct or fraud in his trust after the expiration of sixty days from the time of his discharge; but after the expiration of sixty days the new corporation shall be liable in any action that may be commenced against it, and founded on any act or omission of such receiver for which he may not be sued, and to the same extent as the receiver, but for this section would be or remain liable, or to the same extent that the new corporation would be had it done or omitted the acts complained of.

**Sec. 12. Municipalities may assent to plan of readjustment.** The commissioners, corporate authorities or proper officers of any city, town, or village, who may hold stock in any corporation, the property and franchises whereof shall be liable to be sold, may assent to any plan or agreement of reorganization which lawfully provides for the formation of a new corporation, and the issue of stock therein to the proper authorities or officers of such cities, towns, or villages in exchange for the stock of the old or former corporation by them respectively held. And such commissioners, corporate authorities, or other proper officers may assign, transfer or surrender the stock so held by them in the manner required by such plan, and accept in lieu thereof the stock issued by such new corporation in conformity therewith.

**Sec. 13. Change of place of business.** Any stock corporation now existing or hereafter organized under the laws of this state, except moneyed corporations, may at any time change its principal office and place of business from the city, town, or county named in its certificate of incorporation, or to which it may have been change hinder the provisions of this section, to any other city, town, or county

in this state, in which it may desire to actually transact and carry on its regular business from day to day, provided that such change has been authorized, either by unanimous consent of the stockholders expressed in writing and duly acknowledged and filed in the office of the secretary of state, or by a vote of the stockholders of said corporation at a special meeting of stockholders called for that purpose. When such change shall be authorized by the stockholders as herein provided, the president and secretary and a majority of the directors of such corporation shall sign a certificate stating the name of said corporation, the city, town, and county where its principal office and place of business was originally located, and to which it may have been subsequently changed, and the city, town, and county to which it is desired to change its said principal office and place of business, and that it is the purpose of said corporation to actually transact and carry on its regular business from day to day at such place, and that such change has been authorized as herein provided, and the names of the directors of said corporation and their respective places of residence, which certificate shall be verified by the oaths of all the persons signing the same, and when so signed and verified, shall be filed in the office of the secretary of state and a duplicate thereof in the office of the clerk of the county from which said principal office and place of business is about to be removed or changed, and another in the office of the clerk of the county to which said removal or change is to be made, and thereupon the principal office and place of business of such corporation shall be changed as stated in said certificate.

**Sec. 14. Combinations prohibited.** No domestic stock corporation and no foreign corporation doing business in this state shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life.

**Sec. 15. Merger.** Any domestic stock corporation and any foreign stock corporation authorized to do business in this state lawfully owning all the stock of any other stock corporation organized for, or engaged in business similar or incidental to that of the possessor corporation may file in the office of the secretary of state, under its common seal, a certificate of such ownership, and of the resolution of its board of directors to merge such other corporation, and thereupon it shall acquire and become, and be possessed of all the estate, property, rights, privileges and franchises of such other corporation, and they shall vest in and be held and enjoyed by it as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by the board of directors of such possessor corporation, and in its name, but without prejudice to any liabilities of such other corporation or the rights of any creditors thereof. Any bridge corporation may be merged under this section with any railroad corporation which shall have acquired the right by contract to run its cars over the bridge of such bridge corporation.

**Sec. 16. Voluntary sale of franchise and property.** A stock corporation, except a railroad corporation and except as otherwise provided by law, with the consent of two-thirds of its stock, may sell and convey its property, rights, privileges, and franchises, or any interest therein or any part thereof to a domestic corporation, engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organizing under any general law of this state for a business of the same general character, and a domestic corporation the principal business of which is carried on in, and the principal tangible property of which is located within a state adjoining the state of New York, may with the consent of the holders of ninety-five per centum of its capital stock, sell and convey its property situate without the state of New York, not including its franchises, to a corporation organized under the laws of such adjoining state, and such sale and conveyance shall, in case of a sale to a domestic corporation, vest the rights, property, and franchises thereby transferred, and in case of a sale to a foreign corporation the property sold, in the corporation to which they are conveyed for the term of its corporate existence, subject to the provisions and restrictions applicable to the corporation conveying them. Before such sale or conveyance shall be made such consent shall be obtained at a meeting of the stockholder called upon like notice as that required for an annual meeting.

**Sec. 17. Rights of non-consenting stockholders on voluntary sale of franchise and property.** If any stockholder not voting in favor of such proposed sale or con-



veyance shall at such meeting, or within twenty days thereafter, object to such sale, and demand payment for his stock, he may, within sixty days after such meeting, apply to the supreme court at any special term thereof held in the district in which the principal place of business of such corporation is situated, upon eight days' notice to the corporation, for the appointment of three persons to appraise the value of such stock, and the court shall appoint three such appraisers, and designate the time and place of their proceedings as shall be deemed proper, and also direct the manner in which payment for such stock shall be made to such stockholders. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time of such dissent, and deliver one copy to such corporation, and another to such stockholder, if demanded; the charges and expenses of the appraisers shall be paid by the corporation. When the corporation shall have paid the amount of such appraisal, as directed by the court, such stockholders shall cease to have any interest in such stock and in the corporate property of such corporation and such stock may be held or disposed of by such corporation.

**Sec. 18. Alterations or extension of business.** Any stock corporation heretofore or hereafter organized under any general or special law of this state may alter its certificate of incorporation so as to include therein any purposes, powers, or provisions which at the time of such alteration may apply to corporations engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organized under any general law of this state for a business of the same general character, by filing in the manner provided for the original certificate of incorporation an amended certificate, executed by the president and secretary, stating the alteration proposed, and that the same has been duly authorized by a vote of a majority of the directors and also by vote of stockholders representing at least three-fifths of the capital stock, at a meeting of the stockholders called for the purpose in the manner provided in section sixty-three of this chapter, and a copy of the proceedings of such meeting, verified by the affidavit of one of the directors present thereat, shall be filed with such amended certificate.

### Article III. Directors and officers.

**Sec. 25. Directors.** The directors of every stock corporation shall be chosen at the time and place fixed by the by-laws of the corporation by a plurality of the votes at such election. Each director shall be a stockholder unless otherwise provided in the certificate, or in a by-law adopted by a stockholders' meeting. Vacancies in the board of directors shall be filled in the manner prescribed in the by-laws. Notice of the time and place of holding any election of directors shall be given by publication thereof, at least once in each week for two successive weeks immediately preceding such election, in a newspaper published in the county where such election is to be held, and in such other manner as may be prescribed in the by-laws. Policyholders of an insurance corporation shall be eligible to election as directors, whether or not they be stockholders. At least one-fourth in number of the directors of every stock corporation shall be elected annually.

**Sec. 26. Change of number of directors.** The number of directors of any stock corporation may be increased or reduced, but not below the minimum number prescribed by law, when the stockholders owning a majority of the stock of the corporation shall so determine, at a meeting to be held on two weeks' notice in writing to each stockholder of record. Such notice shall be served personally or by mail, directed to each stockholder at his last known post-office address. Proof of the service of such notice shall be filed in the office of the corporation at or before the time of such meeting. The proceedings of such meeting shall be entered in the minutes of the corporation and a transcript thereof verified by the president and secretary of the meeting shall be filed in the offices where the original certificates of incorporation were filed. Such increase or reduction may also be effected by unanimous consent without a meeting, in which case there shall be filed in the offices herein specified the unanimous consent of the stockholders in writing, signed by them, or their duly authorized proxies, but no such consent shall be valid unless there is annexed thereto an affidavit of the custodian of the stock book of such

corporation stating that the persons who have signed such consent, either in person or by proxy, are the holders of record of the entire capital stock of said corporation issued and outstanding. If a corporation formed under or subject to the banking law, the consent of the superintendent of banks, and if an insurance corporation, the consent of the superintendent of insurance, shall be first obtained to such increase or reduction of the number of directors. This section shall apply to any stock corporation whether organized under a general or special law, and the number of directors may be increased as hereby provided notwithstanding the maximum number of directors now prescribed by law. If the number of directors be increased, the additional directors authorized by such increase shall be elected by the votes of a majority of the directors in office at the time of the increase. If the original or an amended certificate of incorporation of the corporation shall provide that the directors shall be divided into two or more classes, whose terms of office shall respectively expire at different times, the additional directors shall be divided among such classes as nearly as practicable in proportion to the respective numbers of directors constituting each class prior to such increase.

**Sec. 27. When acts of directors void.** When the directors of any corporation for the first year of its corporate existence shall hold over and continue to be directors after the first year, because of their neglect or refusal to adopt the by-laws required to enable the stockholders to hold the annual election for directors, all their acts and proceedings while so holding over, done for and in the name of the corporation, designed to charge upon it any liability or obligation for the services of any such director, or any officer, or attorney or counsel appointed by them, and every such liability or obligation shall be held to be fraudulent and void.

**Sec. 28. Liability of directors for making unauthorized dividends.** The directors of a stock corporation shall not make dividends, except from the surplus profits arising from the business of such corporation, nor divide, withdraw or in any way pay to the stockholders or any of them, any part of the capital of such corporation, or reduce its capital stock, except as authorized by law. In case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or were not present when the same happened, shall jointly and severally be liable to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or its creditors respectively by reason of such withdrawal, division or reduction. But this section shall not prevent a division and distribution of the assets of any such corporation remaining after the payment of all its debts and liabilities upon the dissolution of such corporation or the expiration of its charter; nor shall it prevent a corporation from accepting shares of its capital stock in complete or partial settlement of a debt owing to the corporation, which by the board of directors shall be deemed to be bad or doubtful.

**Sec. 29. Liability of directors for loans to stockholders.** No loan of moneys shall be made by any stock corporation, except a moneyed corporation or by any officer thereof out of its funds to any stockholder therein, nor shall any such corporation or officer discount any note or other evidence of debt, or receive the same in payment of any instalment or any part thereof due or to become due on any stock in such corporation, or receive or discount any note, or other evidence of debt, to enable any stockholder to withdraw any part of the money paid in by him on his stock. In case of the violation of any provision of this section, the officers or directors making such loan, or assenting thereto, or receiving or discounting such notes or other evidences of debt, shall, jointly and severally, be personally liable to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned, and to the full amount of the notes or other evidences of debt so received or discounted, with interest from the time such liability accrued.

**Sec. 30. Officers.** The directors of a stock corporation may appoint from their number a president, and may appoint a secretary, treasurer, and other officers, agents and employees, who shall respectively have such powers and perform such duties in the management of the property and affairs of the corporation, subject to the control of the directors, as may be prescribed by them or in the by-laws. The directors may require any such officer, agent or employee to give security for the faithful performance of his duties, and may remove him at pleasure. The policy-

holders of an insurance corporation shall be eligible to election or appointment as its officers.

**Sec. 31. Inspectors and their oath.** The inspectors of election of every stock corporation shall be appointed in the manner prescribed in the by-laws, but the inspectors of the first election of directors and of all previous meetings of the stockholders shall be appointed by the board of directors named in the certificate of incorporation. No director or officer of a moneyed corporation shall be eligible to election or appointment as inspector. Each inspector shall be entitled to a reasonable compensation for his services, to be paid by the corporation, and if any inspector shall refuse to serve, or neglect to attend at the election, or his office become vacant, the meeting may appoint an inspector in his place unless the by-laws otherwise provide. The inspectors appointed to act at any meeting of the stockholders shall, before entering upon the discharge of their duties, be sworn to faithfully execute the duties of inspector at such meeting with strict impartiality, and according to the best of their ability, and the oath so taken shall be subscribed by them, and immediately filed in the office of the clerk of the county in which such election or meeting shall be held, with a certificate of the result of the vote taken thereat.

**Sec. 32. Books to be kept.** Every stock corporation shall keep at its office correct books of account of all its business and transactions, and a book to be known as the stock book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. The stock book of every such corporation shall be open daily, during at least three business hours, for the inspection of its stockholders and judgment creditors, who may make extracts therefrom. No transfer of stock shall be valid as against the corporation, its stockholders and creditors for any purpose except to render the transferee liable for the debts of the corporation to the extent provided for in this chapter, until it shall have been entered in such book as required by this section, by an entry showing from and to whom transferred. The stock book of every such corporation and the books of account of every bank shall be presumptive evidence of the facts therein so stated in favor of the plaintiff, in any action or proceeding against such corporation or any of its officers, directors, or stockholders. Every corporation that shall neglect or refuse to keep or cause to be kept such books, or to keep any book open for inspection as herein required, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect or refuse. If any officer or agent of any such corporation shall wilfully neglect or refuse to make any proper entry in such book or books, or shall neglect or refuse to exhibit the same, or to allow them to be inspected and extracts taken therefrom as provided in this section, the corporation and such officer or agent shall each forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all damages resulting to him therefrom.

**Sec. 33. Stock books of foreign corporations.** Every foreign stock corporation having an office for the transaction of business in this state, except moneyed and railroad corporations, shall keep therein a book to be known as a stock book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. Such stock book shall be open daily, during business hours, for the inspection of its stockholders and judgment creditors, and any officer of the state authorized by law to investigate the affairs of any such corporation. If any such foreign stock corporation has in this state a transfer agent, whether such agent shall be a corporation or a natural person, such stock book may be deposited in the office of such agent and shall be open to inspection at all times during the usual hours of transacting business, to any stockholder, judgment creditor or officer of the state authorized by law to investigate the affairs of such corporation. For any refusal to allow such book to be inspected, such corporation and the officer or agent so refusing shall each forfeit the sum of two hundred and fifty dollars to be recovered by the person to whom such refusal was made.

**Sec. 34. Annual report to secretary of state.** Every domestic stock corporation and every foreign stock corporation doing business within this state, except moneyed and railroad corporations, shall annually, during the month of January, or, if doing

business without the United States, before the first day of May, may make a report as of the first day of January, which will state: 1. The amount of its capital stock, and the proportion actually issued; 2. The amount of its debts or an amount which they do not exceed; 3. The amount of its assets or an amount which its assets at least equal; 4. The names and addresses of all the directors and officers of the company, and in the case of a foreign corporation, the name also of the person designated in the manner prescribed by the code of civil procedure, as a person upon whom process against the corporation may be served within this state.

Such report shall be made by the president or a vice-president or the treasurer or a secretary of the corporation and shall be filed in the office of the secretary of state. If such report be not so made and filed, any such officer who shall thereafter neglect or refuse to make and to file such report, within ten days after written request so to do shall have been made by a creditor or by a stockholder of the corporation, shall forfeit to the people the sum of fifty dollars for every day he shall so neglect or refuse.

**Sec. 35. Liability of officers for false certificates, reports or public notices.** If any certificate or report made or public notice given by the officers or directors of a stock corporation shall be false in any material representation, the officers and directors signing the same shall jointly and severally be personally liable to any person who has become a creditor or stockholder of the corporation upon the faith of any such certificate, report, notice or any material representation therein to the amount of the debt contracted upon the faith thereof if not paid when due, or the damage sustained by any purchaser of or subscriber to its stock upon the faith thereof. The liability imposed by this section shall exist in all cases where the contents of any such certificate, report or notice or of any material representation therein shall have been communicated either directly or indirectly to the person so becoming a creditor or stockholder and he became such creditor or stockholder upon the faith thereof. No action can be maintained for a cause of action created by this section unless brought within two years from the time the certificate, report or public notice shall have been made or given by the officers or directors of such corporation.

#### Article IV. Stock and stockholders.

**Sec. 50. Issue and transfers of stock.** The stock of every stock corporation shall be represented by certificates prepared by the directors and signed by the president or vice-president and secretary or treasurer and sealed with the seal of the corporation, and shall be transferable in the manner prescribed in this chapter and in the by-laws. No share shall be transferable until all previous calls thereon shall have been fully paid in.

**Sec. 51. Transfers of stock by stockholder indebted to corporation.** If a stockholder shall be indebted to the corporation, the directors may refuse to consent to a transfer of his stock until such indebtedness is paid, provided a copy of this section is written or printed upon the certificate of stock.

**Sec. 52. Purchase of stock of other corporations.** Any stock corporation, domestic or foreign, now existing or hereafter organized, except moneyed corporations, may purchase, acquire, hold and dispose of the stocks, bonds, and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds, or other obligations if authorized so to do by a provision in the certificate of incorporation of such stock corporation, or in any certificate amendatory thereof or supplementary thereto, filed in pursuance of law, or if the corporation whose stock is so purchased, acquired, held or disposed of, is engaged in a business similar to that of such stock corporation, or engaged in the manufacture, use or sale of the property, or in the construction or operation of works necessary or useful in the business of such stock corporation, or in which or in connection with which the manufactured articles, product, or property of such stock corporation are or may be used, or is a corporation with which such stock corporation is or may be authorized to consolidate. When any such corporation shall be a stockholder in any other corporation, as herein provided, its president or other officers shall be eligible to the office of director of such corporation, the same as if they were individually stockholders therein and the corporation holding such stock shall possess and exercise in respect thereof, all the rights, powers, and privileges of individual owners or holders of such stock.

**Sec. 53. Subscriptions to stock.** If the whole capital stock shall not have been subscribed at the time of filing the certificate of incorporation, the directors named in the certificate may open books of subscription to fill up the capital stock in such places and after giving such notices as they may deem expedient, and may continue to receive subscriptions until the whole capital stock is subscribed. At the time of subscribing, every subscriber, whose subscription is payable in money, shall pay to the directors ten per centum upon the amount subscribed by him in cash, and no such subscription shall be received or taken without such payment.

**Sec. 54. Time of payment of subscriptions to stock.** Subscriptions to the capital stock of a corporation shall be paid at such times and in such instalments as the board of directors may by resolution require. If default shall be made in the payment of any instalment as required by such resolution, the board may declare the stock and all previous payments thereon forfeited for the use of the corporation, after the expiration of sixty days from the service on the defaulting stockholder, personally, or by mail directed to him at his last known post-office address, of a written notice requiring him to make payment within sixty days from the service of the notice at a place specified therein, and stating that, in case of failure to do so, his stock and all previous payments thereon will be forfeited for the use of the corporation.

Such stock, if forfeited, may be reissued or subscriptions therefor may be received as in the case of stock not issued or subscribed for. If not sold for its par value or subscribed for within six months after such forfeiture, it shall be canceled and deducted from the amount of the capital stock. If by such cancellation, the amount of the capital stock is reduced below the minimum required by law, the capital stock shall be increased to the required amount within three months thereafter or an action may be brought or proceedings instituted to close up the business of the corporation as in the case of an insolvent corporation. If a receiver of the assets of the corporation has been appointed, all unpaid subscriptions to the stock shall be paid at such times and in such instalments as the receiver or the court may direct.

**Sec. 55. Consideration for issue of stock and bonds.** No corporation shall issue either stock or bonds except for money, labor done or property actually received for the use and lawful purposes of such corporation. Any corporation may purchase any property authorized by its certificate of incorporation, or necessary for the use and lawful purposes of such corporation, and may issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this chapter; and in the absence of fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation, by law required to be published or filed, this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported as issued for property purchased.

**Sec. 56. Liabilities of stockholders.** Every holder of capital stock not fully paid, in any stock corporation, shall be personally liable to its creditors, to an amount equal to the amount unpaid on the stock held by him for debts of the corporation contracted while such stock was held by him. As to existing corporations the liability imposed by this section shall be in lieu of the liability imposed upon stockholders of any existing corporation, under any general or special law, excepting laws relating to moneyed corporations, and corporations and associations for banking purposes, on account of any indebtedness hereafter contracted or any stock hereafter issued; but nothing in this section contained shall create or increase any liability of stockholders of any existing corporation under any general or special law.

**Sec. 57. Liabilities of stockholders to laborers, servants or employees.** The stockholders of every stock corporation shall jointly and severally be personally liable for all debts due and owing to any of its laborers, servants, or employees other than contractors, for services performed by them for such corporation. Before such laborer, servant, or employee shall charge such stockholder for such services, he shall give him notice in writing, within thirty days after the termination of such services, that he intends to hold him liable, and shall commence an action therefor within thirty days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for services.

**Sec. 58. Non-liability in certain cases.** No person holding stock in any corporation as collateral security, or as executor, administrator, guardian, or trustee, unless he shall have voluntarily invested the trust funds in such stock, shall be personally subject to liability as a stockholder; but the person pledging such stock shall be considered the holder thereof and shall be liable as stockholder, and the estates and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in the like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act and held the same stock in his own name, unless it appears that such executor, administrator, guardian, or trustee voluntarily invested the trust funds in such stocks, in which case he shall be personally liable as a stockholder.

**Sec. 59. Limitation of stockholder's liability.** No action shall be brought against a stockholder for any debt of the corporation until judgment therefor has been recovered against the corporation, and an execution thereon has been returned unsatisfied in whole or in part, and the amount due on such execution shall be the amount recoverable, with costs against the stockholder. No stockholder shall be personally liable for any debt of the corporation not payable within two years from the time it is contracted, nor unless an action for its collection shall be brought against the corporation within two years after the debt becomes due; and no action shall be brought against a stockholder after he shall have ceased to be a stockholder, for any debt of the corporation, unless brought within two years from the time he shall have ceased to be a stockholder.

**Sec. 60. Partly paid stock.** The original or the amended certificate of incorporation of any stock corporation may contain a provision expressly authorizing the issue of the whole or of any part of the capital stock as partly paid stock, subject to calls thereon until the whole thereof shall have been paid in. In such case, if in or upon the certificate issued to represent such stock, the amount paid thereon shall be specified, the holder thereof shall not be subject to any liability except for the payment to the corporation of the amount remaining unpaid upon such stock, and for the payment of indebtedness to employees pursuant to sections fifty-seven, fifty-eight, and fifty-nine of this chapter; and in any such case, the corporation may declare and may pay dividends upon the basis of the amount actually paid upon the respective shares of stock instead of upon the par value thereof.

**Sec. 61. Preferred and common stock.** Every domestic stock corporation may issue preferred stock and common stock and different classes of preferred stock, if the certificate of incorporation so provides, or by the consent of the holders of record of two-thirds of the capital stock, given at a meeting called for that purpose upon notice such as is required for the annual meeting of the corporation. A certificate of the proceedings of such meeting, signed and sworn to by the president or vice-president, and by the secretary or assistant secretary, of the corporation, shall be filed and recorded in the offices where the original certificate of incorporation of such corporation was filed and recorded; and the corporation may, upon the written request of the holders of any preferred stock, by a two-thirds vote of its directors, exchange the same for common stock, and issue certificates for common stock therefor, upon such valuation as may have been agreed upon in the certificate of organization of such corporation, or the issue of such preferred stock, or share for share, but the total amount of such capital stock shall not be increased thereby.

**Sec. 62. Increase or reduction of capital stock.** Any domestic corporation may increase or reduce its capital stock in the manner herein provided, but not above the maximum or below the minimum, if any, prescribed by general law governing corporations formed for similar purposes. If increased, the holders of the additional stock issued shall be subject to the same liabilities with respect thereto as are provided by law in relation to the original capital; if reduced, the amount of its debts and liabilities shall not exceed the amount of its reduced capital, unless an insurance corporation, in which case the amount of its debts and liabilities shall not exceed the amount of its reduced capital and other assets. The owner of any stock shall not be relieved from any liability existing prior to the reduction of the capital stock of any stock corporation. If a banking corporation, whether the capital be increased or reduced, its assets shall at least be equal to its debts and liabilities and the capital stock, as increased or reduced. A domestic railroad corporation

may increase or reduce its capital stock in the manner herein provided, notwithstanding any provision contained herein, or in any general or special law fixing or limiting the amount of capital stock which may be issued by it.

**Sec. 63. Notice of meeting to increase or reduce capital stock.** Every such increase or reduction must be authorized either by the unanimous consent of the stockholders, expressed in writing and filed in the office of the secretary of state and in the office of the clerk of the county in which the principal business office of the corporation is located, or by a vote of the stockholders owning at least a majority of the stock of the corporation, taken at a meeting of the stockholders specially called for that purpose in the manner provided by law or by the by-laws. Notice of the meeting, stating the time, place, and object, and the amount of the increase or reduction proposed, signed by the president or a vice-president and the secretary, shall be published once a week, for at least two successive weeks, in a newspaper in the county where its principal business office is located, if any is published therein, and a copy of such notice shall be duly mailed to each stockholder or member at his last-known post-office address at least two weeks before the meeting or shall be personally served on him at least five days before the meeting.

**Sec. 64. Conduct of such meeting; certificate of increase or reduction.** If, at the time and place specified in the notice, the stockholders shall appear in person or by proxy in numbers representing at least a majority of all the shares of stock, they shall organize by choosing from their number a chairman and secretary, and take a vote of those present in person or by proxy, and if a sufficient number of votes shall be given in favor of such increase or reduction, or if the same shall have been authorized by the unanimous consent of stockholders expressed in writing signed by them or their duly authorized proxies, a certificate of the proceedings showing a compliance with the provisions of this chapter, the amount of capital theretofore authorized, and the proportion thereof actually issued, and the amount of the increased or reduced capital stock, and in case of the reduction of capital stock the whole amount of the ascertained debts and liabilities of the corporation, shall be made, signed, verified, and acknowledged by the chairman and secretary of the meeting, and filed in the office of the clerk of the county where its principal place of business shall be located, and a duplicate thereof in the office of the secretary of state. In case of a reduction of the capital stock, except of a railroad corporation or a moneyed corporation, such certificate or consent hereinafter provided for shall have indorsed thereon the approval of the comptroller, to the effect that the reduced capital is sufficient for the proper purposes of the corporation, and is in excess of its ascertained debts and liabilities; and in case of the increase or reduction of the capital stock of a railroad corporation or a moneyed corporation, the certificate or the unanimous consent of stockholders, as the case may be, shall have indorsed thereon the approval of the public service commission having jurisdiction thereof, if a railroad corporation; of the superintendent of banks, if a corporation formed under or subject to the banking law, and of the superintendent of insurance, if an insurance corporation. When the certificate herein provided for, or the unanimous consent of stockholders in writing, signed by them or their duly authorized proxies, approved as aforesaid, has been filed, the capital stock of such corporation shall be increased or reduced, as the case may be, to the amount specified in such certificate or consent. The proceedings of the meeting at which such increase or reduction is voted, or, if such increase or reduction shall have been authorized by unanimous consent without a meeting, then a copy of such consent shall be entered upon the minutes of the corporation. If the capital stock is reduced, the amount of capital over and above the amount of the reduced capital shall, if the meeting or consents so determine or provide, be returned to the stockholders pro rata, at such times and in such manner as the directors shall determine, except in the case of the reduction of the capital stock of an insurance corporation, as an alternative to make good an existing impairment.

**Sec. 65. Change in par value of shares.** The number of shares into which the capital stock of any stock corporation is divided may be increased or reduced by a two-thirds vote of all stock duly represented at a meeting held and conducted in like manner, and upon filing a like certificate, as required for the increase or reduction of its capital stock. If such increase or reduction of the number of shares be so authorized, the corporation shall issue to each stockholder certificates for as many shares of the new stock as equal in par value the shares of the old stock held



by him, upon surrender and cancellation of such old stock. This section does not authorize the increase or reduction of the capital stock of such corporation.

**Sec. 66. Prohibited transfers to officers or stockholders.** No corporation which shall have refused to pay any of its notes or other obligations, when due, in lawful money of the United States, nor any of its officers or directors, shall transfer any of its property to any of its officers, directors, or stockholders, directly or indirectly, for the payment of any debt, or upon any other consideration than the full value of the property paid in cash. No conveyance, assignment, or transfer of any property of any such corporation by it or by any officer, director, or stockholder thereof, nor any payment made, judgment suffered, lien created, or security given by it or by any officer, director, or stockholder when the corporation is insolvent or its insolvency is imminent, with the intent of giving a preference to any particular creditor over other creditors of the corporation, shall be valid, except that laborers' wages for services shall be preferred claims and be entitled to payment before any other creditors out of the corporation assets in excess of valid prior liens or incumbrances. No corporation formed under or subject to the banking, insurance, or railroad law shall make any assignment in contemplation of insolvency. Every person receiving by means of any such prohibited act or deed any property of the corporation shall be bound to account therefor to its creditors or stockholders or other trustees. No stockholder of any such corporation shall make any transfer or assignment of his stock therein to any person in contemplation of its insolvency. Every transfer or assignment or other act done in violation of the foregoing provisions of this section shall be void. No conveyance, assignment, or transfer of any property of a corporation formed under or subject to the banking law, exceeding in value one thousand dollars shall be made by such corporation, or by any officer or director thereof, unless authorized by previous resolution of its board of directors, except promissory notes or other evidences of debt issued or received by the officers of the corporation in the transaction of its ordinary business, and except payments in specie or other current money or in bank bills made by such officers. No such conveyance, assignment, or transfer shall be void in the hands of a purchaser for a valuable consideration without notice. Every director or officer of a corporation who shall violate or be concerned in violating any provisions of this section, shall be personally liable to the creditors and stockholders of the corporation of which he shall be director or an officer to the full extent of any loss they may respectively sustain by such violation.

**Sec. 67. Application to court to order issue of new in place of lost certificate of stock.** The owner of a lost or destroyed certificate of stock, if the corporation shall refuse to issue a new certificate in place thereof, may apply to the supreme court, at any special term held in the district where he resides, or in which the principal business office of the corporation is located, for an order requiring the corporation to show cause why it should not be required to issue a new certificate in place of the one lost or destroyed. The application shall be by petition, duly verified by the owner, stating the name of the corporation, the number and date of the certificate, if known, or if it can be ascertained by the petitioner; the number of shares named therein, to whom issued, and as particular a statement of the circumstances attending such loss or destruction as the petitioner can give. Upon the presentation of the petition the court shall make an order requiring the corporation to show cause, at a time and place therein mentioned, why it should not issue a new certificate of stock in place of the one described in the petition. A copy of the petition and order shall be served on the president or other head of the corporation, or on the secretary or treasurer thereof, personally, at least ten days before the time for showing cause.

**Sec. 68. Order of court upon such application.** Upon the return of the order, with proof of due service thereof, the court shall, in a summary manner, and in such mode as it may deem advisable, inquire into the truth of the facts stated in the petition, and hear the proofs and allegations of the parties in regard thereto, and if satisfied that the petitioner is the lawful owner of the number of shares, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed, and cannot after due diligence be found, and that no sufficient cause has been shown why a new certificate should not be issued, it shall make an order requiring the corporation, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares specified in the order, upon depositing such security, or filing a bond in such form



and with such sureties as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter be found to be the lawful owner of the certificate lost or destroyed; but such provision requiring security to be deposited or bond filed is to be construed as excluding an application made by a domestic municipal corporation or by a public officer in behalf of such corporation; and the court may direct the publication of such notice, either before or after making such order as it shall deem proper. Any person claiming any rights under the certificates alleged to have been lost or destroyed shall have recourse to such indemnity, but in any application under the provisions of this chapter, in which a domestic municipal corporation or a public officer in behalf of such corporation, shall be by the foregoing provisions of this section excused from depositing security or filing a bond, such municipal corporation shall be liable for all damages that may be sustained by any person, in the same case and to the same extent as sureties to a bond or undertaking would have been, if such a bond or undertaking had been filed; and the corporation issuing such certificate shall be discharged from all liability to such person upon compliance with such order; and obedience to the order may be enforced by attachment against the officer or officers of the corporation on proof of his or their refusal to comply with it.

**Sec. 69. Financial statement to stockholders.** Stockholders owning five per centum of the capital stock of any corporation other than a moneyed corporation, not exceeding one hundred thousand dollars, or three per centum where it exceeds one hundred thousand dollars, may make a written request to the treasurer or chief fiscal officer thereof, for a statement of its affairs, under oath, embracing a particular account of all its assets and liabilities, and the treasurer shall make such statement and deliver it to the person presenting the request within thirty days thereafter, and keep on file for twelve months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder demanding an examination thereof; but the treasurer or such chief fiscal officer shall not be required to deliver more than one such statement in any one year. The supreme court, or any justice thereof, may upon application, for good cause shown, extend the time for making and delivering such certificate. For every neglect or refusal of the treasurer or other chief fiscal officer thereof to comply with the provisions of this section he shall forfeit and pay to the person making such request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished.

**Sec. 70. Liabilities of officers, directors and stockholders of foreign corporations.** Except as otherwise provided in this chapter the officers, directors, and stockholders of a foreign stock corporation transacting business in this state, except moneyed and railroad corporations, shall be liable under the provisions of this chapter, in the same manner and to the same extent as the officers, directors, and stockholders of a domestic corporation, for: 1. The making of unauthorized dividends; 2. Unlawful loans to stockholders; 3. Making false certificates, reports, or public notices; 4. An illegal transfer of the stock and property of such corporation, when it is insolvent or its insolvency is threatened; 5. The failure to file an annual report.

Such liabilities may be enforced in the courts of this state, in the same manner as similar liabilities imposed by law upon the officers, directors, and stockholders of domestic corporations.

### **Lien Law.**

#### **Laws of 1909, c. 38, constituting Chapter Thirty-three of the Consolidated Laws.**

**Sec. 231. Corporate mortgages against real and personal property.** Mortgages creating a lien upon real and personal property, executed by a corporation as security for the payment of bonds issued by such corporation, or by any telegraph, telephone, or electric light corporation, and recorded as a mortgage of real property in each county where such property is located or through which the line of such telegraph, telephone, or electric light corporation runs, need not be filed or refiled as chattel mortgages.

## Code of Civil Procedure.

**Sec. 431. How personal service of summons made upon a domestic corporation.** Personal service of the summons upon a defendant, being a domestic corporation, must be made by delivering a copy thereof, within the state, as follows: . . . . 3. . . . to the president or other head of the corporation, the secretary or clerk to the corporation, the cashier, the treasurer, or a director, or managing agent.

**Sec. 432. Id.; upon a foreign corporation.** Personal service of the summons upon a defendant, being a foreign corporation, must be made by delivering a copy thereof, within the state, as follows: 1. To the president, vice-president, treasurer, assistant treasurer, secretary, or assistant secretary; or, if the corporation lacks either of those officers, to the officer performing corresponding functions under another name; 2. To a person designated for the purpose as provided in section sixteen of the general corporation law; 3. If such a designation is not in force, or if neither the person designated, nor an officer specified in subdivision first of this section, can be found with due diligence, and the corporation has property within the state, or the cause of action arose therein; to the cashier, a director, or a managing agent of the corporation, within the state; 4. If the person designated as provided in section sixteen of the general corporation law dies or removes from the place where the corporation has its principal place of business within the state and the corporation does not within thirty days after such death or removal designate in like manner another person upon whom process against it may be served within the state, process against the corporation in an action upon any liability incurred within this state or if the corporation has property within the state may after such death, removal or revocation and before another designation is made be served upon the secretary of state.

**Sec. 433. Service of process, etc., to commence a special proceeding.** The provisions of this article, relating to the mode of service of a summons, apply likewise to the service of any process or other paper, whereby a special proceeding is commenced in a court, or before an officer, except a proceeding to punish for contempt, and except where special provision for the service thereof is otherwise made by law.

**Sec. 438. Cases in which service of summons by publication, etc., may be ordered.** An order directing the service of a summons upon a defendant, without the state, or by publication, may be made in either of the following cases: 1. Where the defendant to be served is a foreign corporation; or, is an unincorporated association consisting of seven or more persons, having a president and treasurer, neither of whom is a resident of this state; or, being a natural person, is not a resident of the state; or where, after diligent inquiry, the defendant remains unknown to the plaintiff, or the plaintiff is unable to ascertain whether the defendant is or is not a resident of the state; . . . . 5. Where the complaint demands judgment, that the defendant be excluded from a vested or contingent interest in or lien upon, specific real or personal property within the state; or that such an interest or lien in favor of either party be enforced, regulated, defined, or limited; or otherwise affecting the title to such property. 6. Where the defendant is a resident of the state or a domestic corporation; and an attempt was made to commence the action against the defendant, as required in chapter fourth of this act, before the expiration of the limitation applicable thereto as fixed in that chapter; and the limitation would have expired, within sixty days next preceding the application, if time had not been extended by the attempt to commence the action. 7. Where the action is against the stockholders of a corporation, or joint-stock company, and is authorized by a law of the state, and the defendant is a stockholder thereof. When a copy of the summons is required by subdivision first or subdivision second of section four hundred and twenty-six of this act, or by section four hundred and twenty-nine of this act, to be delivered to a person other than the defendant, an order, directing the service of a copy of the summons upon such person without the state, or by publication, may be made as prescribed in this section, as if such person was the defendant in the action, and upon a verified complaint and the same proof with respect to such person, as is required in the next succeeding section with respect to a defendant. And sections four hundred and forty to four hundred and forty-four both inclusive, apply to the proceedings in like manner as if such person was a defendant.

### Pleadings.

**Sec. 525. Verification; how and by whom made.** The verification must be made by the affidavit of the party, or, if there are two or more parties united in interest, and pleading together, by at least one of them, who is acquainted with the facts, except as follows: 1. Where the party is a domestic corporation, the verification must be made by an officer thereof; . . . . 3. Where the party is a foreign corporation; . . . . or where the action or defence is founded upon a written instrument for the payment of money only, which is in the possession of the agent or the attorney; or where all the material allegations of the pleading are within the personal knowledge of the agent or the attorney; in either case the verification may be made by the agent of or the attorney for the party.

**Sec. 1775. Complaint in actions by or against corporations.** In an action brought by or against a corporation, the complaint must aver that the plaintiff, or the defendant, as the case may be, is a corporation; must state whether it is a domestic corporation or a foreign corporation; and, if the latter, the state, country, or government, by or under whose laws it was created. But the plaintiff need not set forth, or specially refer to, any act or proceeding, by or under which the corporation was created.

**Sec. 1776. When proof of corporate existence unnecessary.** In an action, brought by or against a corporation, the plaintiff need not prove, upon the trial, the existence of the corporation, unless the answer is verified, and contains an affirmative allegation that the plaintiff, or the defendant, as the case may be, is not a corporation.

**Sec. 1777. Misnomer, when waived.** In an action or special proceeding, brought by or against a corporation, the defendant is deemed to have waived any mistake in the statement of the corporate name, unless the misnomer is pleaded in the answer, or other pleading in the defendant's behalf.

**Sec. 1778. Action against a corporation upon a note, etc.** In an action against a foreign or domestic corporation, to recover damages for the non-payment of a promissory note, or other evidence of debt, for the absolute payment of money, upon demand, or at a particular time, an order, extending the time to answer or demur, shall not be granted, except by the court, upon notice to the plaintiff's attorney. In such an action, unless the defendant serves, with a copy of his answer or demurrer, a copy of an order of a judge, directing that the issues presented by the pleadings be tried, the plaintiff may take judgment, as in case of default in pleading, at the expiration of twenty days after service of a copy of the complaint, either personally with the summons, or upon the defendant's attorney, pursuant to his demand therefor; or, if the service of the summons was otherwise than personal, at the expiration of twenty days after the service is complete.

**Sec. 1779. When foreign corporation may sue.** An action may be maintained by a foreign corporation, in like manner, and subject to the same regulations, as where the action is brought by a domestic corporation, except as otherwise specially prescribed by law. But a foreign corporation cannot maintain an action, founded upon an act, or upon a liability or obligation, express or implied, arising out of, or made and entered into in consideration of, an act, which the laws of the state forbid a corporation or association of individuals to do, without express authority of law. This section does not affect the validity of a meeting of the stockholders or directors of a foreign corporation, held within the state, where such a meeting is authorized by the laws of the state, country, or government by or under which the corporation is created; or of an act, done at such a meeting, which is not in conflict with the same laws, or the laws of the state.

**Sec. 1780. When foreign corporation may be sued.** An action against a foreign corporation may be maintained by a resident of the state, or by a domestic corporation, for any cause of action. An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only: 1. Where the action is brought to recover damages for the breach of a contract, made within the state, or relating to property situated within the state, at the time of the making thereof; 2. Where it is brought to recover real property situated within the state, or a chattel, which is replevied within the state; 3. Where the cause of action arose within the state, except where the object of the action is to affect the title to real property situated without the state.

## Penal Law Provisions.

Laws of 1909, c. 88, constituting Chapter Forty of the Consolidated Laws.

### Article LXIV. Corporations.

**Sec. 660. Frauds in the organization of corporations.** A person who: 1. Without authority subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member, or promoter of such corporation or association; or, 2. Signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation, existing or proposed; or, 3. Signs to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement, that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

**Sec. 661. Frauds in procuring organization of corporations.** An officer, agent, or clerk of a corporation, or of persons proposing to organize a corporation, or to increase the capital stock of a corporation, who knowingly exhibits a false, forged, or altered book, paper, voucher, security, or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in a state prison not exceeding ten years.

**Sec. 662. Fraudulent issue of stocks and bonds.** An officer, agent, or other person in the service of any joint-stock company or corporation formed or existing under the laws of this state, or of the United States or of any state or territory thereof, or of any foreign government or country, who wilfully and knowingly, with intent to defraud: 1. Sells, pledges or issues, or causes to be sold, pledged or issued, or signs or executes, or causes to be signed or executed with intent to sell, pledge or issue, or causes to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation or of the limit imposed by law or otherwise upon its power to create or issue stock or evidences of debt; or, 2. Reissues, sells, pledges, or disposes of, or causes to be reissued, sold, pledged, or disposed of, any surrendered or canceled certificates, or other evidence of the transfer or ownership of any such share or shares, is punishable by imprisonment for a term not exceeding seven years, or by a fine not exceeding three thousand dollars, or by both.

**Sec. 663. Acting for foreign corporations not authorized to do business in this state.** Any person, or corporation, who: 1. Acts as agent or representative of any mortgage, loan, or investment corporation or building and mutual loan corporation or association or co-operative savings and loan association organized outside of this state, while such mortgage, loan, or investment corporation or building and mutual loan corporation or association or co-operative savings and loan association shall not be authorized under a license of the superintendent of banks to do business in this state; or, 2. Acts as agent or representative in this state of a foreign corporation, other than a moneyed corporation, with the words "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," or any other words or terms indicating, representing, or holding out such company to be a moneyed corporation as a part of its name or corporate title, or who, in connection with such corporation or otherwise, shall put forth any sign containing said name, or who shall advertise or publish the said company as doing business in this state, directly or indirectly, through agents or otherwise, while such company shall not be authorized under a certificate procured from the secretary of state pursuant to section fifteen of the general corporation law to do business in this state, is guilty of a misdemeanor.

**Sec. 664. Misconduct of officers and directors of stock corporations.** A director of a stock corporation, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended: 1. To make a dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or, 2. To divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock of the corporation; or to reduce such capital stock without the consent of the legislature; or, 3. To discount or receive any note or other evidence of debt in payment of an installment of capital stock actually called in, and required to be paid, or with intent to provide the means of making such payment; or, 4. To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock; or, 5. To apply any portion of the funds of such corporation, except surplus profits, directly or indirectly, to the purchase of shares of its own stock, is guilty of a misdemeanor. An officer or director of a stock corporation who: 6. Issues, participates in issuing, or concurs in a vote to issue any increase of its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law; or, 7. Sells, or agrees to sell, or is directly or indirectly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share, is guilty of a misdemeanor, punishable by imprisonment for not less than six months, or by a fine not exceeding five thousand dollars, or by both.

**Sec. 665. Misconduct of directors, officers, agents and employees of corporations.** A director, officer, agent, or employee of any corporation or joint-stock association who: 1. Knowingly receives or possesses himself of any of its property otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or, 2. Makes or concurs in making any false entry, or concurs in omitting to make any material entry in its books or accounts; or, 3. Knowingly a) concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or b) omits or concurs in omitting any statement required by law to be contained therein; or, 4. Having the custody or control of its books, wilfully refuses or neglects to make any proper entry in the stock book of such corporation as required by law, or to exhibit or allow the same to be inspected, and extracts to be taken therefrom by any person entitled by law to inspect the same, or take extracts therefrom; or, 5. If a notice of an application for an injunction affecting the property or business of such joint-stock association or corporation is served upon him, omits to disclose the fact of such service and the time and place of such application to the other directors, officers, and managers thereof; or, 6. Refuses or neglects to make any report or statement lawfully required by a public officer, is guilty of a misdemeanor.

**Sec. 666. Unlawful use of certain titles in connection with corporate name.** Any person, association or corporation, other than a moneyed corporation, who shall within this state directly or indirectly, or through agents or representatives transact business under, or in anywise use a corporate name or a corporate title with the words "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," as a part of such name or title, is guilty of a misdemeanor; provided, however, that any domestic corporation, other than a moneyed corporation, heretofore duly organized and heretofore duly authorized by law to use and on April twenty-ninth, nineteen hundred and four, lawfully using either or any of such words as a part of its lawful corporate title, may lawfully continue to use such corporate title, provided and if it, being a corporation other than a moneyed corporation, shall, wherever the name shall be printed, written, engraved, or displayed, add, in legible English characters, of substantially the same size and style as the name, directly under the said name or immediately in connection therewith, wherever so used, the words "not a moneyed corporation."

**Sec. 667. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions.** It is no defense to a prosecution for a violation of the provisions of this article and article twenty-six, that the corporation is a foreign corporation, if it carries on business or keeps an office therefor in this state

The term "director" as used in this article and article twenty-six includes any of the persons having, by law, the direction or management of the affairs of a corporation, by whatever name described.

A director of a corporation or joint-stock association is deemed to have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this article and of article twenty-six. If present at a meeting of the directors at which any act, proceeding, or omission of such directors in violation of this article and article twenty-six occurs, he must be deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered on the minutes of the directors. If absent from such meeting, he must be deemed to have concurred in any such violation, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the corporation for six months thereafter without causing or in writing requiring his dissent from such violation to be entered on such record of minutes.

**Sec. 668. Misconduct at corporate elections.** Any person who: 1. Being entitled to vote at any meeting of the stockholders or bondholders or both of a stock corporation, sells his vote, or who issues a proxy to vote to any person for any sum of money or thing of value, except as expressly authorized by law; or, 2. Acts as an inspector of election at any such meeting and violates an oath taken by him in pursuance of law as such inspector, or violates the provisions of an oath required by law to be taken by him as such inspector, or is guilty of any dishonest or corrupt conduct as such inspector, is guilty of a misdemeanor.

**Sec. 669. Misconduct of officers and agents of pipe-line corporations.** Any officer, agent, or manager of a pipe-line corporation who: 1. Neglects or refuses to transport any product delivered for transportation, or to accept and allow a delivery thereof in the order of application, according to the general rules of the corporation, as provided by law; or, 2. Charges, accepts, or agrees to accept for such receipt, transportation, and delivery, a sum different from the amount fixed by such regulations; or, 3. Allows or pays, or agrees to allow or pay, or suffers to be allowed or paid or repaid, any draw-back, rebate or allowance, so that any person shall, by any device, have or procure any transportation of products over such pipe-line at a less rate or charge than is fixed in such regulations, is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding six months, or by both.

**Sec. 889. Forgery in third degree.** A person who: 1. Being an officer or in the employment of a corporation, association, partnership, or individuals falsifies, or unlawfully and corruptly alters, erases, obliterates, or destroys any accounts, books of accounts, records, or other writing, belonging to or appertaining to the business of the corporation, association or partnership or individuals; or, 2. With intent to injure or defraud, shall falsely make, alter, forge or counterfeit, or shall cause, aid, abet, assist or otherwise connive at, or be a party to the making, altering, forging or counterfeiting of any letter, telegram, or other written communication, paper, or instrument by which making, altering, forging or counterfeiting, any other person shall be in any manner injured in his good name, standing, position or general reputation; or, 3. Shall alter, or shall cause, aid, abet, or otherwise connive at, or be a party to the uttering of any letter, telegram, report or other written communication, paper or instrument purporting to have been written or signed by another person, or any paper purporting to be a copy of any such paper or writing where no original existed, which said letter, telegram, report, or other written communication, paper or instrument, or paper purporting to be a copy thereof, as aforesaid, the person uttering the same shall know to be false, forged or counterfeited, and by the uttering of which the sentiments, opinions, conduct, character, prospects, interests, or rights of such other person shall be misrepresented or otherwise injuriously affected; or, 4. With intent to defraud, shall forge, counterfeit or falsely alter and wrongfully utter any ticket, contract or other paper, or writing entitling, or purporting to entitle, the person whose name appears therein, or the holder or bearer thereof, to entrance upon the grounds or premises of any membership corporation, or being thereupon, to remain upon such grounds or premises; or, with like intent, shall use any such ticket, contract, or other paper or writing, to effect an entrance or as evidence of his right to remain upon such grounds or

premises; or, with like intent, shall sell, exchange, or deliver, or keep or offer for sale, exchange or delivery, or receive upon any purchase, exchange, or delivery, any such ticket, contract or other paper or writing, knowing the same to have been forged, counterfeited or falsely altered, is guilty of forgery in the third degree. A person who, with intent to defraud or to conceal any larceny or misappropriation by any person of any money or property: 1. Alters, erases, obliterates, or destroys an account, book of accounts, record, or writing, belonging to, or appertaining to the business of, a corporation, association, public office or officer, partnership, or individual; or, 2. Makes a false entry in any such account or book of accounts; or, 3. Wilfully omits to make true entry of any material particular in any such account or book of accounts, made, written, or kept by him or under his direction, is guilty of forgery in the third degree.

**Sec. 890. Officer of corporation selling fraudulent shares.** An officer, agent, or other person employed by any company or corporation existing under the laws of this state, or of any other state or territory of the United States, or of any foreign government, who wilfully and with design to defraud, sells, pledges or issues, or causes to be sold, pledged or issued, or signs or procures to be signed with intent to sell, pledge or issue, or to be sold, pledged or issued, a false, forged, or fraudulent paper, writing or instrument, being or purporting to be a scrip, certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such company or corporation, or a bond or other evidence of debt of such company or corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, is guilty of forgery in the third degree, and upon conviction, in addition to the punishment prescribed in section eight hundred and ninety-three of this chapter for that offense, may also be sentenced to pay a fine not exceeding three thousand dollars.

**Sec. 893. Punishment for forgery in third degree.** Forgery in the third degree is punishable by imprisonment for not more than five years.

## Ohio.

### Gen. Code, 1910.<sup>1)</sup>

#### Foreign corporations.

**Sec. 178. Certificate of admission of foreign corporation.** Before a foreign corporation for profit transacts business in this state, it shall procure from the secretary of state a certificate that it has complied with the requirements of law to authorize it to do business in this state, and that the business of such corporation to be transacted in this state is such as may be lawfully carried on by a corporation, organized under the laws of this state for such or similar business, or if more than one kind of business, by two or more corporations so incorporated for such kinds of business exclusively. No such foreign corporation doing business in this state without such certificate shall maintain an action in this state upon a contract made by it in this state until it has procured such certificate. This section shall not apply to foreign banking, insurance, building and loan, or bond investment corporations.

**Sec. 179. Statement required before admission.** Before granting such certificate, the secretary of state shall require such foreign corporation to file in his office a sworn copy of its charter or certificate of incorporation, and a statement under its corporate seal setting forth the following: The amount of capital stock of the corporation, the business in which it is engaged or in which it proposes to engage within this state; the proposed location of its principal place of business within this state; and the name of a person designated as provided by law, upon whom process against the corporation may be served within this state. The person so designated must have an office or place of business at the proposed location of the principal place of business of the corporation.

**Sec. 180. Fees to be paid before delivery of certificates.** For issuing such certificate the secretary of state shall be entitled to receive from a foreign corporation the following fees:

<sup>1)</sup> See also the Uniform Stock Transfer Act, *supra*.

A corporation having an authorized capital stock of one hundred thousand dollars or less, fifteen dollars.

A corporation having an authorized capital stock of more than one hundred thousand dollars, and not exceeding three hundred thousand dollars, twenty dollars.

A corporation having an authorized capital stock of more than three hundred thousand dollars, and not exceeding five hundred thousand dollars, twenty-five dollars.

A corporation having an authorized capital stock of more than five hundred thousand dollars, and less than one million dollars, thirty dollars.

A corporation having an authorized capital stock of one million dollars, or more, fifty dollars.

Whereupon such foreign corporation shall be entitled to receive from the secretary of state the certificate provided in the second preceding section.

**Sec. 181. Person upon whom process to be served.** If a person designated by a foreign corporation as its agent within this state dies or removes from the principal place of business of the corporation within this state, the corporation, within thirty days after such death or removal, shall designate in like manner another person upon whom process may be served within this state. On failure so to do, the secretary of state shall revoke the authority of the corporation to do business within this state and process against such corporation in an action upon the liability incurred within this state before such revocation may be served upon the secretary of state after such death or removal and before another designation is made. At the time of such service the plaintiff shall pay to the secretary of state a fee of two dollars, which shall be included in the taxable costs of the action, and the secretary of state shall forthwith mail a copy of the service to the corporation if its address or the address of any officer is known to him.

**Sec. 182. Penalty for non-compliance with previous sections.** Whoever solicits or transacts business in this state for a foreign corporation which is subject to the provisions of the preceding four sections, before it has complied with the provisions of such sections, shall be fined not less than ten dollars nor more than five hundred dollars, or imprisoned not less than ten days nor more than six months, or both. Upon direction of the attorney general, the prosecuting attorney shall prosecute any person charged with a violation of the provisions of such sections.

**Sec. 183. Statement required before doing business.** Before doing business in this state, a foreign corporation organized for profit and owning or using a part or all of its capital or plant in this state shall make and file with the secretary of state, in such form as he may prescribe, a statement under oath of its president, secretary, treasurer, superintendent, or managing agent in this state, containing the following facts: 1. The number of shares of authorized capital stock of the corporation and the par value of each share; 2. The name and location of the office or offices of the corporation in Ohio and the names and addresses of the officers or agents of the corporation in charge of its business in Ohio; 3. The value of the property owned and used by the corporation in Ohio, where situated, and the value of the property of the corporation owned and used outside of Ohio; 4. The proportion of the capital stock of the corporation represented by property owned and used and by business transacted in Ohio.

**Sec. 184. Payment of franchise fee and certificate.** From the facts thus reported and any other facts coming to his knowledge, the secretary of state shall determine the proportion of the capital stock of the corporation represented by its property and business in this state, and shall charge and collect from such corporation for the privilege of exercising its franchise in this state, one-tenth of one per cent upon the proportion of its authorized capital stock represented by property owned and used and business transacted in this state, but not less than ten dollars in any case. Upon the payment of such fee the secretary of state shall make and deliver to such foreign corporation a certificate that it has complied with the laws of Ohio and is authorized to do business therein, stating the amount of its authorized capital stock and the proportion of such authorized capital stock represented in this state.

**Sec. 185. Fee for increase of capital stock.** A corporation which has filed its statement and paid the fee prescribed by the preceding two sections and which thereafter shall increase the proportion of its capital stock, represented by property used and business done in this state, shall file within thirty days after such increase



an additional statement with the secretary of state, and pay a fee of one-tenth of one per cent upon the increase of its authorized capital stock represented by property owned and business transacted in this state.

**Sec. 186. Exemption from penalty.** If a foreign corporation complies with the provisions of the preceding three sections, it shall not be subject to process of attachment under any law of this state upon the ground that it is a foreign corporation, or non-resident of the state. A foreign corporation subject to the provisions of such sections which shall neglect or refuse to comply with the requirements thereof shall forfeit and pay one thousand dollars and an additional penalty of one thousand dollars for each month that it continues to transact business in this state without complying with such sections, to be recovered by an action in the name of the state, and on collection paid into the state treasury to the credit of the general revenue fund.

**Sec. 187. Must comply herewith before certain actions can be brought.** A foreign corporation which has violated such preceding sections shall not maintain an action in this state upon contract made by it in this state, until it has complied with the requirements of such sections and procured the requisite certificate from the secretary of state.

**Sec. 188. Certain corporations excepted.** The preceding five sections shall not apply to foreign insurance, banking, savings and loan, building and loan, or bond investment corporations, or to express, telegraph, telephone, railroad, sleeping car, transportation, or other corporations engaged in Ohio in inter-state commerce; or to foreign corporations entirely non-resident soliciting business or making sales in this state by correspondence or by traveling salesmen.

**Sec. 189. Right of hearing before secretary of state.** On application, a foreign corporation shall have the right to be heard by the secretary of state in the matter of the determination of the proportion of its capital stock represented by property used and business done in this state.

**Sec. 190. Right of appeal.** A corporation aggrieved by the decision of the secretary of state under the preceding section may, within ten days, appeal to the auditor of state, the treasurer of state, and the attorney general, whose decision shall be final.

**Sec. 191. Actions against foreign corporations; remission of penalties.** On request of the secretary of state, the attorney general shall prosecute an action against a foreign corporation under the provisions of this chapter in the court of common pleas of Franklin county or in any county in which the corporation has an office or place of business. On good cause shown, the governor and secretary of state may remit the penalty or part thereof incurred by a foreign corporation under this chapter.

## Domestic corporations.

### Formation.

**Sec. 8623. Purpose for which corporation may be formed.** Except for carrying on professional business, a corporation may be formed for any purpose for which natural persons lawfully may associate themselves.

**Sec. 8624. Sanatoriums.** Corporations for the erection, owning and conducting of sanatoriums for receiving and caring for patients, their medical, surgical, and hygienic treatment, and the instruction of nurses in the treatment of diseases and of hygiene, are not forbidden by the next preceding section.

**Sec. 8625. Articles of incorporation.** Any number of persons, not less than five, a majority of whom are citizens of this state, desiring to become incorporated, shall subscribe and acknowledge articles of incorporation, which must contain: 1. The name of the corporation, which, unless it is not for profit, shall begin with the word "the" and end with the word "company", except as otherwise provided by law; 2. The place where it is to be located, or its principal business transacted; 3. The purpose for which it is formed; 4. The amount of its capital stock, if it is to have capital stock, and the number of shares into which it is divided; 5. But, if the corporation is for a purpose which includes the construction of an improvement not to be located at a single place, the articles of incorporation must also set forth: a) The kind of improvement intended to be constructed; b) Its termini, and the counties in or through which it or its branches will pass.

**Sec. 8626. Acknowledgment of articles; where filed.** Articles of incorporation shall be acknowledged before an officer authorized to take the acknowledgment

of deeds, the form of which shall be prescribed by the secretary of state. The official character of the officer before whom articles of incorporation are acknowledged, shall be certified by the clerk of the common pleas court of the county wherein the acknowledgment is taken. Articles of incorporation shall be filed in the office of the secretary of state, who shall record them, and shall also record certificates relating to that corporation, thereafter filed in his office.

**Sec. 8627. General powers.** Upon filing articles of incorporation, the persons who subscribed them, their associates, successors, and assigns, by the name and style provided therein, shall be a body corporate, with succession, power to sue and be sued, contract and be contracted with; also, unless specially limited, to acquire and hold all property, real or personal, necessary to effect the object for which it is created, and at pleasure convey it in conformity with its regulations and the laws of this state. Such corporation also may make, use, and at will alter a common seal, and do all other acts needful to accomplish the purposes of its organization.

**Sec. 8628. Same or similar names.** The secretary of state shall not file or record any articles of incorporation wherein the corporate name is likely to mislead the public as to the nature or purpose of the business its charter authorizes, nor if such name is that of an existing corporation, or so similar thereto as to be likely to mislead the public, unless the written consent of the existing corporation, signed by its president and secretary, be filed with such articles.

**Sec. 8629. Certified copy evidence of incorporation.** A copy of articles of incorporation so filed, and duly certified by the secretary of state, shall be prima facie evidence of the existence of the corporation therein named.

**Sec. 8630. Subscription books.** The persons named in the articles of incorporation of a corporation for profit, or a majority of them, shall order books to be opened for subscriptions to the capital stock of the corporation at such time or times and place or places as they deem expedient.

**Sec. 8631. Opening of books.** Such persons shall give at least thirty days' notice of the times and places of opening such books of subscription, by publication in a newspaper published or generally circulated in the county or counties where they are to be opened. Such notice however, may be waived in writing by all the incorporators, but the waiver shall be entered or copied in the corporate records.

**Sec. 8632. Payment of subscription.** At the time of making a subscription to the capital stock of a corporation, ten per cent on each share subscribed for, shall be payable. The residue shall be paid in such installments at the times and places, and to such persons, as the directors require.

**Sec. 8633. Certificate when ten per cent is subscribed.** When ten per cent of the capital stock is subscribed, the subscribers to the articles of incorporation, or a majority of them at once shall so certify in writing to the secretary of state.

**Sec. 8634. Incorporators' liability.** The incorporators shall be liable to any person affected thereby, in the amount of any deficiency in the actual payment of ten per cent on the stock subscribed for at the time of so certifying to the secretary of state.

**Sec. 8635. Notice of election of directors.** As soon as such certificate is made, the signers thereto, shall give notice to the stockholders, as provided in section eighty-six hundred and thirty-one, to meet at such time and place as the notice designates, for the purpose of choosing not less than five nor more than thirty directors, to continue in office until the time fixed for the annual election, and until their successors are elected and qualified. But if all subscribers to stock are present in person or by proxy, such notice may be waived by them in writing.

**Sec. 8636. Conduct of election; voting.** At the time and place appointed, directors shall be chosen by ballot, by the stockholders who attend, either in person or by lawful proxies. At such and all other elections of directors, each stockholder shall have the right to vote in person or by proxy the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate his shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock equals, or to distribute them on the same principle among as many candidates as he thinks fit. Such directors shall not be elected in any other manner. A majority of the number of shares shall be necessary for a choice, but no person shall vote on a share on which an installment is due and unpaid.

**Sec. 8637. Inspectors of the election.** At such first election the subscribers of the articles of incorporation present, shall be inspectors of election, certify what persons are elected directors, and appoint the time and place for holding their first meeting.

**Sec. 8638. Limit on votes of stockholders.** A corporation may provide in the articles of incorporation that each stockholder, irrespective of the amount of stock he owns shall be entitled to one vote, and no more, at an election of directors or upon any subject submitted at a stockholders' meeting. When such provision is made the corporation shall be governed thereby.

**Sec. 8639. Provisions to which such corporations are subject.** Corporations whose articles of incorporation contain the limitation provided for in the next preceding section, also shall be subject to the following: 1. No person shall hold or own stock therein in excess of one thousand dollars face value; 2. Annually, within thirty days after the thirty-first day of December, the directors shall make and file with the recorder of the county in which the corporation is doing business, a statement of its financial condition upon such thirty-first day of December, plainly setting forth its assets and liabilities in detail, the amount of its paid up capital stock, the names of its stockholders, and the number of shares owned by each. Such statement shall be signed and duly sworn to before any officer authorized to administer oaths in this state, by a majority of the directors, including the treasurer. If the directors fail to make the statements above required, or make a false statement, they personally shall be liable for all claims and demands against such corporation; 3. By-laws for the government of the corporation, and for the distribution of its net earnings among its workmen, patrons, and shareholders, consistent with the constitution and laws of the state, may be made by the stockholders.

**Sec. 8640. Application for appointment of inspectors of election.** Within fifteen days next before a meeting held for the election of directors or trustees, or for the determination of any question, by the stockholders of a corporation, or by the subscribers to its stock, or by its creditors and stockholders for its reorganization, any person or persons entitled to vote thereat and owning at least one-tenth interest in its stock may apply to the common pleas court of the county wherein such meeting is to be held, or, if the court be not in session, to a judge thereof, or, in case of the absence or disability of such judge, then to the probate court, for the appointment of inspectors for such meeting. No such application shall be acted upon until notice thereof has been served upon the corporation at its general office. The court or judge may require such additional notice by newspaper publication, or otherwise, as is deemed proper.

**Sec. 8641. Appointment of inspectors.** Upon the hearing of such application, if deemed proper, the court or judge shall appoint three competent disinterested persons inspectors for such meeting, and for good cause may thereafter vacate the appointment of one or more and appoint another or others instead. In case an inspector fails to attend such meeting, or to act thereat, the stockholders may fill the vacancy so caused.

**Sec. 8642. List of stockholders for inspectors.** Before every such meeting, the officer or the agent of the corporation having charge of the transfer of its stock, under oath must make out a list of its stockholders, showing the number and classes of shares held by each, as shown by its books, on the date fixed for closing the stock transfers before its meetings; or if no time be fixed therefor, then on the tenth day prior to the date of such meeting. Such list shall be delivered to the inspectors of the meeting, and be prima facie evidence of the ownership of its stock.

**Sec. 8643. Stock ownership, how ascertained.** In case of the absence of such list the inspectors shall ascertain the ownership of stock by the corporation books, stock certificates or other proof.

**Sec. 8644. Conduct of election.** The inspectors so appointed, or if none be appointed, then those selected by the meeting, shall receive and count the votes cast at such meeting, or at any adjournment thereof, either upon an election or for the decision of any question to be decided by vote, and determine the result. Their certificate shall be prima facie evidence thereof.

**Sec. 8645. Compensation of inspectors.** The court or judge making the appointment of inspectors may fix their compensation, and require the applicants for their appointment to secure its payment; but the corporation shall be liable therefor if the meeting by vote so determines.

**Sec. 8646. Election of club-house corporation.** A corporation, the principal object of which is the owning and operating of a club-house for the use of its stockholders, which is not kept open and operated for their use during the winter season, shall hold its annual election of directors on the third Monday in July of each year. Such election shall be held at its club-house.

**Sec. 8647. Elections.** Except club-house companies, unless the regulations of a corporation otherwise provide, an annual election for trustees or directors shall be held on the first Monday in January of each year. When for any cause, trustees or directors are not elected at the annual meeting, or other meeting called for that purpose, they may be chosen at a members' or stockholders' meeting, if all the members or stockholders are present in person or by proxies, or at a meeting called by the trustees or directors, or any two members or stockholders, notice of which has been given, in writing, to each stockholder, or by publication for ten days in some newspaper printed in the county where the corporation is situated, or has its principal office. Trustees and directors in all cases shall continue in office until their successors are elected and qualified.

**Sec. 8648. Life of corporations to deal in real estate.** A corporation formed to buy or sell real estate, shall expire by limitation in twenty-five years from the date on which its articles of incorporation were issued by the secretary of state.

**Sec. 8649. Procedure if all real estate not disposed of in twenty-four years.** If within twenty-four years from the date of its articles, the real estate of such a corporation is not wholly disposed of, its directors shall at once bring an action against it, and the owners of liens upon such real estate, in the common pleas court of the county wherein such realty is situated, by filing a petition praying for its sale as therein described. Should the board not begin such action within sixty days after such twenty-four years expire, the prosecuting attorney of the county in which the realty is situated, on the expiration of the sixty days at once shall begin and prosecute it.

**Sec. 8650. Service of summons, sale and distribution.** Service of summons upon the defendants, appraisal and sale of such real estate, and distribution of the proceeds of the sale shall be made as provided in actions of foreclosure of mortgages and marshalling liens. The court may allow the plaintiff, in case he be the prosecuting attorney, a just attorney fee, to be taxed with the costs of the action.

[Secs. 8651—8659. Relate to corporations not for profit.]

#### Directors and trustees.

**Sec. 8660. Controlling body of a corporation.** The corporate powers, business, and property of corporations formed under this title shall be exercised, conducted, and controlled by the board of directors; or, if there is no capital stock, by the board of trustees.

**Sec. 8661. Qualifications of directors and trustees.** A majority of such directors must be citizens of this state. All directors and executive officers shall be holders of stock of the company for which they are chosen, in an amount to be fixed by the by-laws, and trustees of corporations must be members thereof.

**Sec. 8662. Vacancies.** When the office of director or trustee becomes vacant, the board may fill it for the unexpired term unless the by-laws otherwise provide.

**Sec. 8663. Oath.** Before entering upon his duties as such, each trustee and director must take an oath faithfully to discharge them.

**Sec. 8664. Organization.** As soon thereafter as is convenient, the board of trustees or directors chosen at any election, shall select one of their number to be president thereof, and unless the regulations of the body otherwise provide for the election of such officers, also appoint a secretary and treasurer of the corporation. A majority of the directors of a corporation for profit and such a number of the trustees as the regulations of a corporation not for profit may provide, shall form a board.

**Sec. 8665. Change in number of directors.** By a vote of a majority of its stock, at a regular meeting of an incorporated company, it may increase the number of its directors to not more than thirty. In like manner, at any time, their number can be reduced to not less than five. At a special meeting of stockholders, also, called and of which notice was given as provided for the election of directors, by vote of a majority of its stock, the increase in the number of directors may be made.

Those elected shall hold their offices until the next annual election for directors, and until their successors are elected and qualified.

**Sec. 8666. Liability of trustees.** The trustees of a corporation created for a purpose other than profit, shall be personally liable for all debts of the corporation by them contracted.

#### Capital stock.

**Sec. 8667. Classes of stock.** If a corporation be organized for profit, it must have a capital stock, which may consist of common and preferred, or common only; but at no time shall the amount of preferred stock at par value exceed two-thirds of the actual capital paid in in cash or property.

**Sec. 8668. Dividends on preferred stock.** When the capital stock is to be both common and preferred, it may be provided in the articles of incorporation that the holders of the preferred stock shall be entitled to yearly dividends of not more than eight per cent, payable quarterly, half yearly, or yearly out of the surplus profits of the company each year in preference to all other stockholders. Such dividends also may be made cumulative.

**Sec. 8669. Provisions in reference to preferred stock.** A corporation issuing both common and preferred stock may create designations, preferences, and voting powers, or restrictions or qualifications thereof, in the certificate of incorporation, and if desired, preferred stock may be made subject to redemption at not less than par, at a fixed time and price, to be expressed in the stock certificates thereof.

**Sec. 8670. Liability of holder of preferred stock.** Upon the insolvency of the corporation no holder of preferred stock shall be liable for its debts until after the remedy against the common stockholders upon their liability, as provided by law, has been exhausted, and then only for such amount as remains unpaid. Such liability in no event shall exceed that fixed by law for the common stock of such corporation.

**Sec. 8671. Rights of holders of preferred stock.** On the insolvency or dissolution of the corporation, the holders of preferred stock shall be entitled to receive from the assets remaining after paying its liabilities, the full payment of its par value, before anything is paid to the common stock.

**Sec. 8672. Certificate of stock.** Upon his demand therefor, of the president or secretary of the company, they shall execute and deliver to any stockholder a certificate showing the true amount of paid up stock therein, held by him.

**Sec. 8673. Record of certificates of stock.** The directors of such corporation, when organized, shall keep a record of all stock subscribed and transferred, and its secretary or recording officer shall register all subscriptions and transfers of stock. For that purpose a book shall be kept, and when a certificate of stock is assigned and delivered by a stockholder, the assignee thereof on demand may have it duly transferred therein by such officer, who at the same time shall enroll also the name of the assignee as a stockholder. The books and records of such corporation at all reasonable times shall be open to the inspection of every stockholder.

**Sec. 8674. How payment of stock enforced.** If an instalment on stock is unpaid for sixty days after the time it was to be paid, whether the stock is held by the subscriber, an assignee, or transferee, it may be collected by suit, or the directors may sell such stock at public auction for the installment then due.

**Sec. 8675. Notice of sale.** Before stock can so be sold, the directors shall give thirty days' notice of the time and place of sale, in some newspaper in general circulation in the county where the delinquent holder resided when he subscribed for it or became such assignee or transferee, or of his actual residence at the time of the sale. If such stockholder resides out of the state, the publication shall be made in the county where the company's principal office is located.

**Sec. 8676. Distribution of proceeds of sale.** When a sale is made, if after paying from its proceeds the amount due on the stock, a balance remains, on his demand it shall be paid to the owner. But if such proceeds fail fully to pay such installment, any balance may be recovered by action against the subscriber, assignee, or transferee.

**Sec. 8677. Procedure when certificate of stock lost or destroyed.** In case a certificate of stock in a corporation is lost or destroyed, the owner thereof may file his petition in the probate court of the county where the principal business

office of such corporation located in this state, setting forth a pertinent description of the certificate, and a full statement of the facts relating to its destruction or loss; that he is the owner of such certificate, and was at the time of its loss or destruction; that he had not assigned, transferred, or disposed of it; and that it was not pledged to any one, or if so, stating to whom, with the facts relating thereto.

**Sec. 8678. Parties and notice.** Such petitioner shall make the corporation and any pledgee defendants to such proceeding, and serve a certified copy of his petition on some chief officer of the corporation, and such pledgee, on which copies the probate judge over his signature shall state when the petition will be heard. Such copies shall be so served not less than twenty days before the hearing. In a newspaper published and of general circulation in the county where the proceeding is pending, and also in the county where he resides, the petitioner shall publish a notice containing the substance and prayer of his petition, for three consecutive weeks immediately before the day of hearing, and stating when and where it will be heard.

**Sec. 8679. Finding and order of the court.** If, upon the hearing, the probate court finds that the foregoing provisions have been complied with, that such certificate was lost or destroyed, and that at that time the petitioner was and is its owner, an order shall be made that such corporation issue and deliver a new certificate to him for the original amount and kind of stock, unless the certificate was pledged to some one at the time of its loss or destruction, and the pledgee yet has a claim against it, in which case the order shall direct that such new certificate be delivered to the pledgee on such terms as the court directs. The corporation shall comply with such orders, and it shall in no wise be prejudiced thereby, or by paying dividends on such new certificate, so long as it is not made known to it that the original certificate is in existence and owned by a person other than the petitioner.

**Sec. 8680. Rights and liabilities under new certificate.** All rights and liabilities attaching to the original certificate shall attach to such re-issued certificate, while in force. Upon the production of the original certificate to such corporation by the owner or pledgee, the re-issued certificate shall be cancelled, surrendered, and void.

**Sec. 8681. Proceedings may be had by administrators or executors.** Executors and administrators, on behalf of estates of deceased owners of such lost or destroyed certificates of stock, may proceed under the next three preceding sections, and have all the rights and benefits thereof.

**Sec. 8682. Paid up stock personal property.** Shares of stock in a corporation shall be personal property, and when fully paid up, be subject to levy and sale upon execution against the owner.

**Sec. 8683. May purchase stock in other companies.** A private corporation also may purchase, or otherwise acquire, and hold shares of stock in other kindred but not competing private corporations, domestic or foreign. This shall not authorize the formation of a trust or combination for the purpose of restricting trade or competition.

**Sec. 8684. Corporate property, how employed.** No corporation shall employ its stocks, means, assets, or other property, directly or indirectly, for any other purpose than to accomplish the legitimate objects of its creation.

#### Stockholders.

**Sec. 8685. Annual statement to stockholders.** Every corporation organized under the laws of Ohio, annually shall make a statement of its financial condition, setting forth its assets and liabilities, and furnish to each stockholder a true copy thereof, together with a list of its stockholders, and their places of residence.

**Sec. 8686. Liability of stockholders.** The stockholders of a corporation who are holders of its shares at a time when its debts and liabilities are enforceable against them, shall be held liable, equally and ratably, but not one for another, in addition to their stock in an amount equal thereto, to the creditors of the corporation to secure the payment of such debts and liabilities. No stockholder who transfers his stock in good faith, if such transfer is made on the books of the company or on the back of the certificate of stock properly witnessed or tendered for transfer on its books prior to the time when such debts and liabilities are so enforceable, may be held to pay any portion thereof.

**Sec. 8687. Corporations created subsequent to November 23, 1903.** The next preceding section shall not apply to stockholders in a corporation created after

the twenty-third of November, 1903, nor to debts or liabilities of a corporation incurred after such date. As to all debts and liabilities of corporations for profit incurred after such date, the stockholders thereof shall be under no liabilities other than those stated in article XIII, section three, of the constitution of Ohio.

**Sec. 8688. Limitation of action to enforce liability.** An action upon the liability of stockholders under the two next preceding sections can only be brought within eighteen months after the debt or obligation shall become enforceable against stockholders.

**Sec. 8689. "Stockholder" defined.** The term "stockholder" as used in the three next preceding sections, shall apply not only to persons who appear by the books of the corporation to be such, but also to an equitable owner of stock, although on the books it appears in the name of another.

**Sec. 8690. Where complaint for enforcement of liability filed.** When a creditor of a corporation seeks to charge its directors, trustees, or other superintending officers, or the stockholders thereof, on account of a liability created by law, he may file his complaint for that purpose in any common pleas court which possesses jurisdiction to enforce such liability.

**Sec. 8691. Procedure by court; receiver.** The court shall proceed thereon, as in other cases, and, when necessary, cause an account to be taken of the property and obligations due to and from such corporation, and may appoint one or more receivers.

**Sec. 8692. Enforcement of liability.** On the filing of an answer, or the taking of such account, if it appears that such corporation is insolvent, and has not sufficient property or effects to satisfy such creditor, the court may proceed to ascertain the respective liabilities of the directors, officers and stockholders, and enforce them by its judgment, as in other cases.

**Sec. 8693. Notice to non-resident stockholders.** When the directors or other officers of a corporation, or the stockholders thereof, are made parties to an action in which a judgment is rendered, if its property is insufficient to discharge its debts, the court shall give notice to non-resident stockholders as provided by law for service upon non-resident defendants in other actions, and then first proceed to compel each stockholder to pay in the amount due and unpaid on the stock held by him, or so much thereof as is necessary to satisfy the debts of the company.

**Sec. 8694. Court to ascertain and adjudge liabilities.** If its debts remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers and of the stockholders, and to adjudge the amount payable by each, and enforce the judgment, as in other cases.

**Sec. 8695. Actions by receiver.** If a receiver is appointed, the court also may authorize and direct him to prosecute such actions in his own name as receiver, in other jurisdictions as become necessary to collect the amount found due from an officer or stockholder.

**Sec. 8696. Notice to creditors.** If an action is brought against a corporation, its directors or other superintending officers, or stockholders, according to the foregoing provisions, when it appears proper, the court may order notice to be published, in such manner as it directs, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time, not less than six months from the first publication of such order, and, in default thereof, to be precluded from any benefit of the judgment rendered therein, and from any distribution made under such judgment.

**Sec. 8697. Distribution of assets.** Upon a final judgment in such an action against an insolvent corporation, the court shall cause a just distribution of its property and assets, or the proceeds thereof, to be made among its creditors.

**Sec. 8698. Increase of capital stock.** After its original capital stock is fully subscribed for, and an installment of ten per cent on each share of stock has been paid thereon, a corporation for profit, or a corporation not for profit, having a capital stock, may increase its capital stock or the number of shares into which it is divided, prior to organization, by the unanimous written consent of all original subscribers. After organization the increase may be made by a vote of the holders of a majority of its stock, at a meeting called by a majority of its directors, at least thirty days' notice of the time, place and object of which has been given by publication in some newspaper of general circulation, and by letter addressed to each stockholder whose place of residence is known. Or, the stock may be increased

at a meeting of the stockholders at which all are present in person, or by proxy, and waive in writing such notice by publication and letter; and also agree in writing to such increase, naming the amount thereof to which they agree. A certificate of such action shall be filed with the secretary of state.

**Sec. 8699. Increase by preferred stock.** Upon the assent in writing of three-fourths in number of the stockholders of a corporation, representing at least three-fourths of its capital stock, to increase the capital stock, it may issue and dispose of preferred stock in the manner by law provided therefor. Upon such increase of stock, a certificate shall be filed with the secretary of state, as provided in the next preceding section.

**Sec. 8700. Reduction of capital stock.** With the written consent of the persons in whose names a majority of the shares of the capital stock thereof stands on its books, the board of directors of such a corporation may reduce the amount of its capital stock and the nominal value of all the shares thereof, and issue certificates therefor. The rights of creditors shall not be affected thereby; and a certificate of such action shall be filed with the secretary of state.

#### Regulations and by-laws.

**Sec. 8701. Corporation may adopt regulations.** Every corporation may adopt a code of regulations for its government, consistent with the constitution and laws of the state.

**Sec. 8702. Trustees or directors may adopt by-laws.** The trustees or directors of a corporation may adopt a code of by-laws for their government, consistent with the regulations of the corporation, and the constitution and laws of the state, and change it at pleasure.

**Sec. 8703. How regulations adopted or changed.** Regulations may be adopted or changed by the assent thereto, in writing, of two-thirds of the stockholders, or, if there is no capital stock, of the members, or by a majority of the stockholders or members, at a meeting held for that purpose, notice of which has been given by the acting president personally to each member or stockholder, or by publication in some newspaper of general circulation in the county in which the corporation is located, or in the counties through which its improvement does or will pass.

**Sec. 8704. What may be provided for by regulations.** When no other provision is specially made in this title, a corporation by its regulations may provide: 1. The time, place and manner of calling and conducting its meetings; 2. The number of stockholders or members constituting a quorum; 3. The time of the annual election for trustees or directors, and the manner of giving notice thereof; 4. The duties and compensation of officers; 5. The manner of election, or appointment, and the tenure of office, of all officers other than the trustees or directors; 6. The qualifications of members, when the corporation is not for profit.

#### Borrowing money.

**Sec. 8705. May borrow money on bond or mortgage.** A corporation may borrow money in any sum not exceeding the amount of its capital stock, issue its notes, or coupon or registered bonds therefor, bearing any legal rate of interest, and secure their payment by a mortgage of its property, real or personal, or both.

**Sec. 8706. When mortgage deemed to be duly recorded.** A mortgage of real and personal property heretofore or hereafter made by a company organized to operate a line or lines of telegraph, telephone, district telegraph messenger service, or for the purpose of supplying gas or electricity or hot water, for lighting, fuel or other purposes, or hot water, or steam, for heating or fuel purposes, shall be duly recorded in the office of the recorder of deeds in each of the counties in which the real or personal property mortgaged is situated or employed.

**Sec. 8707. When lien effective.** A mortgage so recorded shall be a good and sufficient lien from the date of its filing for record in each county where it is recorded as well upon the personal as the real property of such a company.

**Sec. 8708. Change of bonds authorized.** A corporation which lawfully has issued registered or coupon bonds, upon the request of a holder thereof, may change such registered into coupon bonds, or coupon into registered bonds, either by substitution or proper indorsement thereon. All liens, securities, and rights which existed on or accrued to such original bonds shall be and continue on and to such substituted or indorsed bonds.



**Sec. 8709. Obligations may be converted into stock.** Upon the written assent of not less than three-fourths of the stockholders, representing at least three-fourths of its capital stock actually paid, a company may borrow money not exceeding one-half of the capital stock so paid in, on such security, by way of mortgage, or otherwise, as is agreed upon, at a lawful rate of interest, and in the instrument evidencing the contract may stipulate that the holders of such instruments shall have the right to convert the amount borrowed, or a part thereof, into either common or preferred stock, this having been provided for by the proper action and certificate of the company. Any action of the directors for borrowing money, issuing bonds, or involving an expenditure of money shall be by yea and nay votes, and record thereof be made showing the vote of each director voting upon the question.

#### **Sale of entire property.**

**Sec. 8710. Sale of entire property and assets.** No corporation organized under the laws of this state shall sell its entire property and assets to any person, persons, or association, or to another corporation, whether organized for the same or similar purposes or otherwise, under the laws of this or any other state, unless three-fourths of the directors of such corporation authorize the execution of an agreement therefor prescribing the terms, considerations, and conditions thereof. The considerations may be money, stocks, bonds, or other instruments for the payment of money, or any valuable consideration.

**Sec. 8711. Submission of agreement.** Such agreement shall be submitted to the stockholders of the corporation at a meeting called for the purpose of taking it into consideration, ten days' notice of the time and place of holding which, and the object thereof, shall be given by registered letter containing a written or printed notice addressed to each of the persons in whose names the stock of the corporation stands on its books; and also by like notice published in some newspaper in the city or village where the corporation has its principal office or place of business. But when all the stockholders are present at such meeting in person or by proxy, notice may be waived in writing.

**Sec. 8712. Adoption of agreement.** At such meeting of stockholders the agreement of the directors shall be considered and a vote by ballot taken for its adoption or rejection. For each share of stock on which all the installments called for by the board of directors are paid, the holder thereof shall be entitled to one vote. The ballots must be cast in person or by proxy, and if three-fourths of all the votes cast at the meeting be for the adoption of the agreement, it shall be valid and binding on such corporation. Upon its adoption, the officers of the company shall execute and deliver to the purchaser good and sufficient deeds and transfers of all the property and assets of the corporation, upon the terms and conditions in the agreement provided.

**Sec. 8713. Dissatisfied stockholder.** If a stockholder be dissatisfied with such sale and refuses to participate in the proceeds thereof, within thirty days after the adoption of such agreement, he shall state his objections thereto in writing and file them with such corporation, and in writing demand from it payment for his stock. Within sixty days thereafter such corporation shall pay to him the value thereof at the time such agreement was adopted. In case of a disagreement as to the value of the stock, it shall be ascertained by three disinterested persons, one of whom to be chosen by the stockholder, one by the directors of the corporation, and the other by the two so selected who shall conduct such arbitration as provided by the law regulating arbitrations.

**Sec. 8714. How award collected.** If the award is not paid within sixty days from its making, and notice thereof given to the stockholder and the corporation, its amount shall be evidence of the amount due from the corporation and may be collected as other debts against it. On receiving payment of the award, the stockholder shall surrender his stock to such corporation.

**Sec. 8715. Procedure when stockholder refuses to submit question.** If such stockholder refuses to submit such question to arbitration, upon the application of a director of the company, the judge of the common pleas court shall appoint arbitrators, who shall ascertain the value of the stock as if the question had been submitted by consent of both parties.

**Sec. 8716. Notice.** In all cases of such arbitration, the party desiring it, shall give the opposite party at least ten days' notice of his intention to apply to the

Judge for the appointment of arbitrators, which notice shall be served in the manner provided for the service of summons, and specify the time and place of the hearing of the application. In cases of non-residents the notice shall be by publication for four consecutive weeks in some newspaper printed in the county.

**Sec. 8717. Deposit of award.** If the party owning the stock refuses to receive the amount awarded, the company may deposit it with the clerk of the common pleas court of the county in which the arbitration was held, which deposit shall operate as if payment were made to the owner of the stock, and also as a cancellation of such stock upon the books of the company.

**Sec. 8718. Sale to a trust prohibited.** A sale of its entire property by a corporation, as hereinbefore authorized, shall not be made for the formation of or to a trust or combination for the purpose of restricting trade or preventing competition.

#### Amendments.

**Sec. 8719. Power to amend.** A corporation organized under the general corporation laws of the state, may amend its articles of incorporation as follows: 1. So as to change its corporate name — but not to one already appropriated, or to one likely to mislead the public; 2. So as to change the place where it is to be located, or its principal business transacted; 3. So as to modify, enlarge, or diminish the objects or purposes for which it was formed; 4. So as to add to them anything omitted from, or which lawfully might have been provided for originally, in such articles. But the capital stock of a corporation shall not be increased or diminished, by such amendment, nor the purpose of its original organization substantially changed.

**Sec. 8720. Proceedings.** Amendments to articles of incorporation may be made at any meeting of the members or stockholders thereof, of which, and of the business to come before it, thirty days' notice has been given by a majority of the directors or trustees, in a newspaper published and of general circulation in the county where the company's principal place of business is located, and by a vote of the owners of at least three-fifths of its capital stock then subscribed, if it has a capital stock, or if not, by a vote of at least three-fifths of its members.

**Sec. 8721. Copy to be filed with secretary of state.** When thus adopted, a copy of such amendment, with a certificate thereto affixed, stating the fact and date of its adoption, that such copy is true copy thereof, signed by the president and secretary of the corporation, and if one there be, sealed with its seal, shall be recorded in the office of the secretary of state, who shall note on the margin of the record of the original articles filed by such corporation, and on the margin of the index thereto, the volume and page where such amendment is recorded.

**Sec. 8722. When amendments take effect.** Amendments to articles of incorporation shall not take effect until filed for record with the secretary of state, nor unless it be waived, until the corporation gives notice of them in some newspaper of general circulation in the county where its principal office is located, for three consecutive weeks.

**Sec. 8723. How notices waived.** All the notices hereinbefore required in such proceedings to amend, may be waived when the holders of all the capital stock of a corporation, or all the members of one having no stock, consent thereto in writing.

#### Dividends.

**Sec. 8724. Dividends to be paid from surplus profits only.** Directors of a corporation organized under the laws of this state shall not make dividends except from surplus profits arising from its business.

**Sec. 8725. Unpaid interest not profits.** In calculating its profits, prior to a dividend, interest then unpaid, although due, on debts owing to it, shall not be included.

**Sec. 8726. How profits ascertained.** In order to ascertain the surplus profits from which a dividend may be made, in the account of profit and loss there shall be charged and deducted from the actual profits: 1. All ordinary and extraordinary expenses, paid or incurred, in managing the affairs and transacting the business of the corporation; 2. Interest paid, or then due or accrued, on debts it owes; 3. All losses of the corporation. In computing its losses, debts owing to it which have been due without prosecution, or interest paid thereon, for more than one year, or upon which judgment was recovered, but has been more than two years un-

satisfied, and on which also for that period, no interest was paid, shall be included.

**Sec. 8727. What advertisements prohibited.** No such corporation shall advertise a larger amount of capital stock than actually has been subscribed and paid in, nor advertise a greater dividend than actually has been earned and credited or paid to its stockholders or members.

**Sec. 8728. Liability for violation.** Every director of such a corporation, who violates or is concerned in violating any provision of the next four preceding sections shall be personally liable to its creditors and stockholders for any loss which thereby they respectively sustain.

#### Miscellaneous.

**Sec. 8729. Affidavit as to campaign contributions.** Every corporation for profit doing business in this state, except corporations required by law to file annual report with the auditor of state or the superintendent of insurance, annually during the month of May, if it be a domestic corporation, and during the month of September, if it be a foreign corporation, shall file with the secretary of state in such form as he prescribes, an affidavit subscribed and sworn to by an officer having knowledge of the facts therein set forth, setting forth that such corporation has not during the preceding year directly or indirectly paid, used or offered, consented or agreed to pay or use, any of its money or property for, or in aid, of any political party, committee or organization, or for in aid of, any candidate for political office or for nomination for any such office, or in any manner used any of its money or property for any political purpose whatever, or for the reimbursement or indemnification of any person or persons for moneys or property so used. Such forms of affidavits as the secretary prescribes shall be attached to or made part of the report required to be made of such corporation under the law, requiring corporations to file annual reports with the secretary of state and to pay annual fee therefor.

**Sec. 8730. Affidavit in annual reports to auditor and superintendent of insurance.** Corporations required by law to file annual reports with the auditor of state or the superintendent of insurance, shall file with such officers similar affidavits in such form as the auditor of state or the superintendent of insurance prescribes. The form of affidavit presented by such officer shall be attached to or made a part of the report required to be made of such corporation under existing laws. The affidavit shall be made at the time when such reports are required to be made.

**Sec. 8731. By what laws corporations shall be governed.** Corporations created before the adoption of the present constitution, which have not, by election or some other act, come to be governed by laws since passed, shall be governed and controlled by the laws then in force, and the valid modifications thereof since or herein enacted. Other corporations now existing or hereafter created shall be governed and controlled by the provisions of this title.

**Sec. 8732. What corporations may accept the provisions of this title.** A corporation created before the adoption of the present constitution, and now actually doing business, may accept any of the provisions of this title. When a certified copy of such acceptance is filed with the secretary of state, so much of its charter as is inconsistent with the provisions of this title is hereby repealed.

**Sec. 8733. Special charters not accepted or acted upon.** All special acts of incorporation in force in this state, which have not been accepted, or acted upon, be and the same are hereby repealed.

[Sees. 8734—8735. Relate to corporations not for profit.]

**Sec. 8736. Corporations created prior to 1851.** Corporations created before the adoption of the present constitution, which take any action under or in pursuance of this title, shall thereby and thereafter be deemed to have consented, and be held to be a corporation, and to have and exercise all its franchises under the present constitution and the laws passed in pursuance thereof, and not otherwise. But any fire insurance company so created, filing annual reports with the superintendent of insurance, as provided by law, or complying with any police regulation contained in chapter one of subdivision two of division three of this title, or in chapter two of division two of title three, part first, shall not be deemed to have consented, nor be affected by the provisions of this section by reason of such compliance.

**Sec. 8737. When provisions do not apply.** This chapter does not apply when special provision is made in subsequent chapters of this title, but the special provision shall govern, unless it clearly appears that the provision is cumulative.

#### **Dissolution.**

[Secs. 8738—8739. Relate to corporations not for profit.]

**Sec. 8740. Dissolution by corporation whose business is closed.** When a majority of the directors or other officers having the management of the concerns of a corporation for profit, which has completely closed its business, and paid all the debts and liabilities incurred by it, desire to surrender its corporate authority and franchises, they, or the president of such board of directors, may call a meeting of the stockholders at such time or place as he or they designate by publication for four weeks in some newspaper published and of general circulation in the county wherein the principal office of the corporation is located and by written notices addressed to each of the stockholders whose residence is known, of the object, time, and place of the meeting.

**Sec. 8741. Filing of certificate.** If all the stockholders present at such meeting in person or by proxy decide to surrender and abandon its corporate authority the corporation shall be abandoned and dissolved upon the filing of a certificate of the abandonment or dissolution with the secretary of state in the manner provided by law.

**Sec. 8742. Trustees to settle affairs of corporation.** Upon the dissolution of a corporation by the expiration of the term of its charter, or otherwise, and unless other persons be appointed by the legislature, or by the stockholders, directors, or trustees of the corporation, or by a court of competent authority, the directors, trustees, or managers of the affairs of such corporation, acting last before the time of its dissolution, by whatever name known in law, and their survivors, shall be the trustees of the creditors and stockholders of the dissolved corporation, and have full power to settle its affairs, collect and pay outstanding debts, and divide among the stockholders the money and other property remaining, in proportion to the stock of each stockholder paid up, after payment of debts and necessary expenses.

**Sec. 8743. Powers and duties of such trustees.** The persons so constituted trustees may sue for and recover the debts and property of the dissolved corporation, by the name of trustees of the corporation, describing it by its corporate name, and jointly and severally they shall be responsible to the creditors and stockholders of the corporation, to the extent of its property and effects coming into their hands. Such trustees may be made or become parties to any action, by or against the corporation. All liens of judgments existing at the time of the dissolution either in favor of or against the corporation, shall continue in force as if the dissolution had not taken place.

[The sections following relate to non-trading corporations.]

## **Pennsylvania.**

### **Constitution.**

#### **Article III. Legislation.**

**Sec. 7.** The general assembly shall not pass any local or special law. . . . creating corporations, or amending, renewing, or extending the charters thereof; granting to any corporation, association, or individual any special or exclusive privilege or immunity, or to any corporation, association, or individual the right to lay down a railroad track.

#### **Article XVI. Private corporations.**

**Sec. 1.** All existing charters, or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith, at the time of the adoption of this constitution, shall thereafter have no validity.

**Sec. 2.** The general assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any other general

or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this constitution.

Sec. 3. The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the general assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state.

Sec. 4. In all elections for directors or managers of a corporation each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

Sec. 5. No foreign corporation shall do any business in this state without having one or more known places of business and an authorized agent or agents in the same upon whom process may be served.

Sec. 6. No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it take or hold any real estate except such as may be necessary and proper for its legitimate business.

Sec. 7. No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days' notice given in pursuance of law.

### Statutes.<sup>1)</sup>

## An Act to provide for the Incorporation and Regulation of certain Corporations (April 29, 1874, P. L. 73).

Sec. 1. That corporations may be formed under the provisions of this act by the voluntary association of five or more persons, for the purposes, and in the manner mentioned herein, and when so formed, each of them by virtue of its existence as such, shall have the following powers, unless otherwise specially provided:

First. To have succession by its corporate name for the period limited by its charter, and when no period is limited thereby, or by this act, perpetually, subject to the power of the general assembly, under the constitution of this commonwealth.

Second. To maintain and defend judicial proceedings.

Third. To make and use a common seal and alter the same at pleasure.

Fourth. To hold, purchase and transfer such real and personal property, as the purposes of the corporation require, not exceeding the amount limited by its charter or by law.

Fifth. To appoint and remove such subordinate officers and agents as the business of the corporation requires, and to allow them a suitable compensation.

Sixth. To make by-laws not inconsistent with law, for the management of its property, the regulation of its affairs, and the transfer of its stock.

Seventh. To enter into any obligation necessary to the transaction of its ordinary affairs.

A supplement to an act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April twenty-ninth, one thousand eight hundred and seventy-four; authorizes the formation of corporations for profit by voluntary association of three or more persons, one of whom, at least, must be a citizen of this commonwealth. May 29, 1901, P. L. 326. See also Act April 23, 1903, P. L. 273. *infra*.

Sec. 2. The second class these for: . . . XII. The transaction of a printing and publishing business; . . . XIV. The creating, purchasing, holding, and selling of patent rights for inventions and designs, and the purchasing of copyrights for books, publications, and registered trademarks, with the right to issue license for the same and receive pay therefor; . . . XX. For any lawful purpose not specifically designated by law as the purpose for which a corporation may be formed.

Clause XX as amended by P. L. 1909, 288.

<sup>1)</sup> See also the Uniform Stock Transfer Act, *supra*.

Sec. 3. The charter of an intended corporation must be subscribed by five or more persons, three of whom at least must be citizens of this commonwealth, and shall set forth: I. The name of the corporation; II. The purpose for which it is formed; III. The place or places where its business is to be transacted; IV. The term for which it is to exist; V. The names and residence of the subscribers and the number of shares subscribed by each; VI. The number of its directors and the names and residences of those who are chosen directors for the first year; VII. The amount of its capital stock, if any, and the number and par value of shares into which it is divided.

Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation printed in the proper county for three weeks, setting forth briefly the character and object of the corporation to be formed, and the intention to make application therefor.

The said certificates of incorporation of the first class shall be acknowledged by at least three of those who subscribed to them before the recorder of deeds of the county in which the business of the corporation is to be transacted, to be their act and deed, and the same being duly certified under the hand and official seal of the said recorder of deeds, shall be presented to a law judge of the said county, accompanied by proof of the publication of the notice of such application, who is hereby required to peruse and examine said instrument, and if the same shall be found to be in the proper form, and within the purposes named in the first class specified in the foregoing section, and shall appear lawful and not injurious to the community, he shall endorse thereon these facts, and shall order and decree thereon that the charter is approved, and that upon the recording of the said charter and order, the subscribers thereto and their associates, shall be a corporation for the purposes and upon the terms therein stated, and the said order and charter shall be recorded in the office for the recording of deeds in and for the county aforesaid, and from thenceforth the persons named therein and subscribing the same, and their associates and successors, shall be a corporation by the name therein given.

The certificate for a corporation embraced within the second class, named in the foregoing section, shall set forth all that is hereinbefore required to be set forth, and except building and loan associations, shall also state that ten per centum of the capital stock thereof has been paid in cash to the treasurer of the intended corporation, and the name and residence of such treasurer shall be therein given. The same shall be acknowledged by at least three of the subscribers thereto, before the recorder of deeds of the county in which the chief operations are to be carried on, or in which the principal office is situated; and they shall also make and subscribe an oath or affirmation before him, to be endorsed on the said certificate, that the statements contained therein are true. The said certificate, accompanied with proof of publication of notice as hereinbefore provided, shall then be produced to the governor of this commonwealth, who shall examine the same, and if he find it to be in proper form and within the purposes named in the second class, specified in the foregoing section, he shall approve thereof and endorse his approval thereon, and direct letters patent to issue in the usual form, incorporating the subscribers and their associates and successors into a body politic and corporate, in deed and in law, by the name chosen; and the said certificate shall be recorded in the office of the secretary of the commonwealth, in a book to be by him kept for that purpose, and he shall forthwith furnish to the auditor-general an abstract therefrom, showing the name, location, amount of capital stock, and name and address of the treasurer of such corporation. The said original certificate, with all of its endorsements, shall then be recorded in the office for the recording of deeds, in and for the county where the chief operations are to be carried on, and from thenceforth the subscribers thereto, and their associates and successors, shall be a corporation for the purposes and upon the terms named in the said charter. Certified copies of both the records thereof and of the records of the charters of the corporations named in the first class specified in the foregoing section, shall be competent evidence for all purposes in the courts of this commonwealth. The secretary of the commonwealth shall charge and receive a fee of five dollars upon every paper relating to a corporation filed or recorded in his office.

See note to sec. 1.

Sec. 4. The charters for incorporations named in this act may be made perpetual, or may be limited in time by their own provisions; and the general assembly reserves the power to revoke or annul any charter of incorporation granted or accepted under the provisions of this act, whenever in the opinion of the said general assembly

bly it may be injurious to the citizens of this commonwealth, in such manner, however, that no injustice shall be done to the corporators or their successors.

Sec. 5. The by-laws of every corporation created under the provisions of this statute, or accepting the same, shall be deemed and taken to be its law, subordinate to this statute, the charter of the same, the constitution and laws of this commonwealth and the constitution of the United States. They shall be made by the stockholders or members of the corporation at a general meeting called for that purpose, unless the charter prescribes another body or a different mode. They shall prescribe the time and place of meeting of the corporation, the powers and duties of its officials, and such other matters as may be pertinent and necessary for the business to be transacted, and may contain penalties for the breach thereof, not exceeding twenty dollars.

The business of every corporation created hereunder, or accepting the same, shall be managed and conducted by a president, a board of directors or trustees, a secretary or clerk, a treasurer, and such other officers, agents, and factors as the corporation authorizes for that purpose, and nothing in any law contained shall prevent or be construed to prohibit the vice-president, treasurer, solicitor, or other officer of any corporation organized or existing under this act, from being a director of such company and receiving at the same time such compensation for his services as such officer as the board of directors of such company may direct. The directors or trustees shall be chosen annually by the stockholders or members at the time fixed by the by-laws, and shall hold their office until others are chosen and qualified in their stead; the manner of such choice, and of the choice or appointment of all other agents and officers of the company shall be prescribed by the by-laws. The number of directors or trustees shall not be less than three; one of them shall be chosen president by the directors, or by the members of the corporation, as the by-laws shall direct. The members of said corporation, may, at a meeting to be called for that purpose, determine, fix, or change the number of directors or trustees that shall thereafter govern it affairs, and a majority of the whole number of such directors or trustees shall be necessary to constitute a quorum. The secretary or clerk shall be sworn and shall record all the votes of the corporation and the minutes of its transactions in a book to be kept for that purpose. The treasurer shall give bond in such sum, and with such sureties, as shall be required by the by-laws for the faithful discharge of his duties, and he shall keep the moneys of the corporation in a separate book account to his credit as treasurer, and if he shall neglect or refuse so do to, he shall be liable to a penalty of fifty dollars for every day he shall fail to do so, to be recovered at the suit of any informer in an action of debt.

Sec. 6. Every such corporation may determine, by its by-laws, what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting to constitute a quorum; if the quorum is not so determined, a majority in interest of the stockholders shall constitute a quorum.

Sec. 7. The directors of such corporation shall procure certificates or evidences of stock, and shall deliver them signed by the president, countersigned by the treasurer, and sealed with the common seal of the corporation, to each person or party entitled to receive the same, according to the number of shares by him, her, or them respectively held, which certificates or evidences of stock shall be transferable at the pleasure of the holder, in person or by attorney duly authorized, as the by-laws may prescribe, subject, however, to all payments due, or to become due thereon; and the assignee or party to whom the same shall have been so transferred, shall be a member of said corporation, and have and enjoy all the immunities, privileges, and franchises, and be subject to all the liabilities, conditions, and penalties incident thereto, in the same manner as the original subscriber or holder would have been, but no certificate shall be transferred so long as the holder thereof is indebted to said company, unless the board of directors shall consent thereto.

Sec. 8. No person acting as judge or officer holding an election for any such corporation, shall enter on the duties of his office or appointment until he take and subscribe an oath or affirmation before a judge, alderman, justice of the peace, or other person qualified by law to administer oaths that he will discharge the duties of his office or appointment with fidelity, that he will not receive any vote but such as he verily believes to be legal; and if any such judge or officer shall, knowingly and willfully, violate his oath or affirmation, he shall be subject to all the penalties

imposed by law upon the officers of the general election of this commonwealth violating their duties, and shall be proceeded against in like manner and with like effect; and if any election, as aforesaid, be held without the person holding the same having first taken an oath or affirmation, as aforesaid, or be invalid for any other reason, such election shall be set aside in the manner now provided by law, and a new election ordered by the court of common pleas of the proper county, upon the petition of not less than five stockholders supported by proof satisfactory to said court.

Sec. 9. In case of the death, removal, or resignation of the president or any of the directors, treasurer, or other officer of any such company, the remaining directors may supply the vacancy thus created until the next election.

Sec. 10. In all elections for directors, managers, or trustees of any corporation created under the provisions of this statute, or accepting its provisions, each member or stockholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer; that is to say, if the said member or stockholder own one share of stock, or has one vote, and is entitled to one vote for each of six directors, by virtue thereof, he may give one vote to each of said six directors, or six votes for any one thereof, or a less number of votes for any less number of directors, and in this manner may distribute or cumulate his votes as he may see fit; all elections for directors or trustees shall be by ballot, and every share of stock shall entitle the holder thereof to one vote, in person or by proxy, to be exercised as provided in this section.

Sec. 11. The capital stock of every such corporation that has or requires capital stock, shall consist of not more than one million dollars, except companies incorporated for the purpose of supplying the public with water, whose capital stock shall not exceed two million dollars, and shall be divided into shares of not more than one hundred dollars each; and all subscriptions to the capital stock shall be paid in such installments and at such times as the directors may require, and if default be made in any payment the person or persons in default shall be liable to pay, in addition to the amount so called for and unpaid, at the rate of one half of one per centum per month for the delay of such payment, and the directors may cause suit to be brought for the recovery of the amount due, together with a penalty of one-half of one per centum per month as aforesaid, or the directors may cause the stock to be sold in the manner provided in clause two of section thirty-nine of this act; and no stockholder shall be entitled to vote at any election, or at any meeting of the stockholders, on whose share or shares any installments or arrearages may have been due and unpaid for the period of thirty days immediately preceeding such election or meeting. The shares of the capital stock of every such company may be transferred on the books of the company, in person or by attorney, subject to such regulations as the by-laws may prescribe; but the provisions of this section shall not apply to corporations in which by this act different and other rules and provisions are enacted for their regulation and government.

Sec. 12. The stock of every corporation created under the provisions of this statute shall be deemed personal property; and no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon. No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as a payment of any part of the capital stock. It shall and may be lawful for any company, organized under the provisions of this act, either for the purpose of carrying on any manufacturing business or for supply of water or for the manufacture and supply of light, to subscribe for, take, purchase, hold, and dispose of the bonds or stock in any company of the same character incorporated under the provisions of this act or its supplements, or guarantee the payment of said bonds and the interest thereon, or either principal or interest, or to enter into contracts for the use or lease of the corporate property, real, personal, or mixed of such company, upon such terms as may be agreed upon with the company or companies owning the same, and to run, use, and operate such property in accordance with such contract or lease.

Sec. 13. It shall be lawful for all corporations to borrow money or to secure any indebtedness created by them, by issuing bonds, with or without coupons attached thereto, and to secure the same by a mortgage or mortgages to be given and executed to a trustee or trustees, for the use of the bondholders, upon their real estate and machinery, or on their real estate alone, to an amount not exceeding one-half of the capital stock of the corporation paid in, and at a rate of interest not ex-



ceeding six per centum: Provided, that it shall be lawful for such corporations as belong to the classes named in clauses four, five, six, seven, nine, and eleven of corporations for profit, of the second class, as set forth in section two of the act of which this is a supplement, and also for such corporations as belong to the class named in clause twenty-four, section two, of the act of assembly approved April seventeenth, one thousand eight hundred and seventy-six, so to borrow money and so to secure the payment of the same, by a mortgage or mortgages on its property and franchises, to an amount not exceeding double the amount of the capital stock of the corporation actually paid in, and at a rate of interest not exceeding six per centum, and this section shall not be construed to prevent mortgages for a greater amount and at a higher rate of interest, where the power to make the same is expressly given by the terms of this statute to certain classes of corporations or is contained in the charter of any private corporations accepting this act, or in the statutes under which certain other classes thereof are by the provisions of this statute to be controlled, governed, and managed.

Sec. 14. The stockholders in each of said corporations shall be liable, in their individual capacity, to the amount of stock held by each of them, for all work or labor done to carry on the operations of each of said corporations; but this section shall not be construed to increase or diminish the liability of stockholders in corporations which, by the terms of this statute, are to be governed, controlled and managed by the provisions of other statutes, but their liability shall be fixed and defined by the terms of the statutes by which said corporations are to be governed, controlled, and managed.

Sec. 15. In any action or bill in equity, brought to enforce any liability under the provisions of this act, the plaintiff may include as defendants, any one or more of the stockholders of such corporation, claimed to be liable therefor; and if judgment be given in favor of the plaintiff for his claim, or any part thereof, and any one or more of the stockholders so made defendants, shall be found to be liable, judgment shall be given against him or them. The execution upon such judgment shall be first levied on the property of such corporation, if to be found in the county where the chief business of the corporation is carried on; and in case such property, sufficient to satisfy the same, cannot be found in said county, the deficiency, or so much thereof, as the stockholder or stockholders, defendants in such judgment, shall be liable to pay, shall be collected of the property of such stockholder or stockholders; on the payment of any judgment as aforesaid, or any part thereof, by one or more stockholders, the stockholder or stockholders so paying the same shall be entitled to have such judgment, or so much thereof as may have been paid by him or them, assigned to him or them for his or their benefit, with power to enforce the same in manner aforesaid, first against the company, and in case the amount so paid by him or them shall not be collected of the property of the corporation, then ratably against the other solvent stockholders, if any such there be, originally liable for the claim on which such judgment was obtained; but no stockholder shall be personally liable for payment of any debt contracted by any such corporation, unless suit for the collection of the same shall be brought against such stockholder or stockholders within six months after such debt shall have become due.

Sec. 16. Every corporation created under the provisions of this act, or accepting its provisions, may, with the consent of a majority in interest of its stockholders, obtained at a meeting to be called for that purpose, of which public notice shall be given during thirty days in a newspaper of the proper county, issue preferred stock of the corporation, the holders of which preferred stock shall be entitled to receive such dividends thereon as the board of directors of the corporation may prescribe, payable only out of the net earnings of the corporation.

Sec. 17. Every corporation created under the provisions of this act or accepting its provisions, may take such real and personal estate, mineral rights, patent rights, and other property, as is necessary for the purposes of its organization and business, and issue stock to the amount of the value thereof in payment thereof, and the stock so issued shall be declared and taken to be full paid stock, and not liable to any further calls or assessments; and in the charter and the certificates and statements to be made by the subscribers and officers of the corporation, such stock shall not be stated or certified as having been issued for cash paid into the company, but shall be stated or certified in this respect according to the fact; and the executors or administrators of any deceased tenant in common of lands, mines, and mineral rights, so proposed to

be taken may, and they are hereby authorized, to convey the individual estate and interest of such decedent therein to such company, receiving therefor so much stock in such company as the said decedent would have been entitled to receive in his lifetime, to be held in the same manner as the lands: Provided, that no directions or limitations contained in any last will and testament of such decedent shall be in any manner interfered with: And provided, that before making such conveyance, such executors or administrators shall give sufficient security, to be approved by the orphans' court having jurisdiction of their accounts, for the faithful application of the stock received therefor; no such corporation shall issue either bonds or stock except for money, labor done, or money or property actually received, and all fictitious increase of stock or indebtedness in any form shall be void; every such corporation may provide for the issue of deferred stock in payment of such real or personal estate or mineral rights, and if so provided, it shall be expressly stated in the charter filed, or in a certificate to be made and recorded, or in the acceptance of this statute, to be filed by any corporation accepting its provisions, with the amount of such deferred stock, and the consideration of the same, and the terms on which the same shall be issued; and the said stock may be made to await payments of dividends thereon, until out of the net earnings at least five per centum has been declared and paid upon the other full paid stock of the corporation.

Sec. 18. The capital stock or indebtedness of any corporation to be created under the provisions of this statute, or accepting its provisions, may be increased, from time to time, by the consent of the persons or bodies corporate holding the larger amount in value of the stock of such company, to such amount as such corporation is by this act authorized to increase its capital stock or indebtedness, but such increase shall only be made for money, labor done, or money or property actually received.

Sec. 19. That any such corporation desirous of increasing its capital stock or indebtedness as provided by this act, shall, by a resolution of its board of directors, call a meeting of its stockholders therefor, which meeting shall be held at its chief office or place of business in this commonwealth; and notice of the time, place, and object of said meeting, shall be published once a week for sixty days prior to such meeting, in at least one newspaper published in the county, city, or borough wherein such office or place of business is situate.

Sec. 20. At the meeting called pursuant to the nineteenth section of this act, an election of the stockholders of such corporation shall be taken for or against such increase, which shall be conducted by three judges, stockholders of said corporation, appointed by the board of directors to hold said election, and if one or more of said judges be absent, the judge or judges present shall appoint a judge or judges, who shall act in the place of the judge or judges absent, and who shall respectively take and subscribe an oath or affirmation before an officer authorized by law to administer the same, well and truly, and according to law, to conduct such election to the best of their ability; and the said judges shall decide upon the qualification of voters, and when the election is closed count the number of shares voted for and against such increase, and declare whether the persons or bodies corporate holding the larger amount of the stock of such corporation have consented to such increase, or refused to consent thereto, and shall make out duplicate returns of said election, stating the number of shares of stock that voted for such increase, and the number that voted against such increase, and subscribe and deliver the same to one of the chief officers of said company.

Sec. 21. Each ballot shall have endorsed thereon the number of shares thereby represented, and be signed by the holder thereof, or by the person holding a proxy therefor; but no share or shares transferred within sixty days shall entitle the holder or holders thereof to vote at such election or meeting, nor shall any proxy be received, or entitle the holder to vote, unless the same shall bear date and have been executed within three months next preceding such election or meeting; and it shall be the duty of such corporation to furnish the judges at said meeting with a statement of the amount of its capital stock, with the names of persons or bodies corporate holding the same, and number of shares by each respectively held, which statement shall be signed by one of the chief officers of such corporation, with an affidavit thereto annexed, that the same is true and correct to the best of his knowledge and belief.

Sec. 22. That it shall be the duty of such corporation, if consent is given to such increase, to file in the office of the secretary of the commonwealth, within

thirty days after such election or meeting, one of the copies of the return of such election provided for by the twentieth section of this act, with a copy of the resolution and notice calling same thereto annexed; and upon the increase of the capital stock or indebtedness of such corporation made pursuant thereto, it shall be the duty of the president or treasurer of such corporation, within thirty days thereafter, to make a return to the secretary of the commonwealth, under oath, of the amount of such increase and terms of the same, that is to say, the terms on which additional stock is issued; and in case of neglect or omission so to do, the corporation shall be subject to a penalty of five thousand dollars, which penalty shall be collected on an account settled by the auditor general and state treasurer, as accounts for taxes due the commonwealth are settled and collected; and the secretary of the commonwealth shall cause said returns to be recorded in a book to be kept for that purpose, and furnish a certified copy of the same to the auditor general, and the corporation shall have the right to recover the same from the officer neglecting or omitting to file the return as aforesaid.

**Sec. 23.** Any corporation created under the provisions of this act, and any corporation of the classes named in the second section hereof, that is now in existence by virtue of any law of this commonwealth, may reduce its capital stock or alter and change the par value of the shares thereof, by a vote of the stockholders taken in the manner and under the regulations prescribed in the eighteenth, nineteenth, twentieth, twenty-first, and twenty-second sections of this act, and it shall be lawful for any corporation in the same manner to sell, assign, dispose of, and convey to any corporation created under or accepting the provisions of this act, its franchises and all its property, real, personal, and mixed, and thereafter such corporation shall cease to exist, and said property and franchises not inconsistent with this act, shall thereafter be vested in the corporation so purchasing as aforesaid.

**Sec. 24.** That the officers and stockholders of corporations organized under or accepting the provisions of this act shall not be individually liable for the debts of said corporation otherwise than in this provided.

**Sec. 25.** The incorporation of any association of persons for the purposes named in this act, or accepting the same, shall be held and taken to be of the same force and effect as if the powers, and privileges conferred, and the duties enjoined, had been conferred and enjoined by special act of the legislature, and the franchises granted shall be construed according to the same rules of law and equity as if it had been created by special charter, and no modification or repeal of this act shall affect any franchise obtained under the provisions of the same.

**Sec. 26.** No corporation of the second class shall go into operation without first having the name of the institution or company, the date of incorporation, the place of business, the amount of capital paid in, and the names of the president and treasurer of the same, registered, in the office of the auditor general; and any such institution or company which shall neglect or refuse to comply with the provisions of this section, shall be subject to a penalty of five hundred dollars, which penalty shall be collected on an account settled by the auditor general and state treasurer as taxes on capital stock are settled and collected. Any corporation or corporations for any of the purposes named and covered by the provisions of this act, heretofore created by any special act or acts, or in existence under the provisions of any general law of this commonwealth, shall be entitled to all the privileges, immunities, franchises, and powers conferred by this act upon corporations to be created under the same, upon filing in the office of the secretary of the commonwealth a certificate of a single corporation, or a joint certificate if two or more corporations incorporated for or doing the same kind of business, under the seal or seals of said corporation or corporations, accepting the provisions of the constitution and of this act, duly authorized by a meeting of stockholders called for that purpose; and upon such acceptance and approval by the governor, he shall issue letters patent to said corporation, or if two or more corporations, to said corporations, as one corporation, under such name as shall be designated by said corporation or corporations in said single or joint certificate, together with the amount and capital, number of shares and par value thereof, as shall be designated by said corporation or corporations in said certificate: Provided, that where two or more corporations shall make a joint certificate as aforesaid, and letters patent shall be issued to said new corporation, said corporations shall thenceforth be deemed, held, and taken to be merged and consolidated, and be subject to all the limitations and liabilities of this act.

### Iron and steel companies.

Sec. 38. Companies incorporated under the provisions of this act for the manufacture of iron or steel, or both, of any other metal, or of any article of commerce from wood or metal, or both, unless otherwise provided by this act, shall, from the date of the letters patent creating the same, have the powers and be governed, managed, and controlled as follows:

1. Every such corporation may, in the manner prescribed in this act, increase its capital stock to an amount not exceeding five million dollars, and shall have the right to purchase, lease, hold, mortgage, and sell real estate and mineral rights, to prove and open mines, to mine and prepare for market, or for their own use and consumption, coal, iron ore, and other minerals, and to erect and construct furnaces, forges, mills, foundries, manufactories, and such other improvements and erections as they may deem necessary, and to manufacture iron and steel, or any other metal, or either thereof, in all shapes and forms, and either of these metals, exclusively or in combination with other metals, or with wood, and to transport all of said articles or any of them to market, and to dispose of the same, and do all such other acts and things as a successful and convenient prosecution of said business may require: Provided, they shall not at any one time have more than ten thousand acres of land within this commonwealth, including leased lands, except companies organized to manufacture iron with charcoal, which said companies may hold timber lands not exceeding the quantity that will be required to furnish wood for charcoal for the purposes of said companies, and said lands may be located in not exceeding four contiguous counties.

2. Every such corporation may make and issue bonds, with or without coupons attached, bearing interest not exceeding six per centum per annum, and sell, exchange, or otherwise dispose of the same, upon such terms and conditions as they may deem advisable, and such bonds, and the interest thereon, may be secured by a mortgage or mortgages upon the corporate franchises, real and leasehold estate: Provided, they shall not issue bonds for a greater sum than three times the amount of their capital stock paid in.

3. The president and directors of every such corporation shall annually lay before the stockholders a full and complete statement of the business and affairs of the corporation for the preceding year; and it shall also be their duty to make report to the auditor general, at such time and in such form as is or may be prescribed by law, of the operations of the corporation, to the end that he may ascertain the amount of tax due by said corporation to the commonwealth, and such report shall be verified by the oaths or affirmations of the president and treasurer of such corporation; and any such corporation which shall neglect or refuse to report to the auditor general, according to law, shall be liable to a penalty of five hundred dollars for the use of the commonwealth, to be sued for and recovered as debts of like amount are or may be by law recoverable.

4. It shall and may be lawful for any corporation organized for the purposes named in this section, to appropriate any stream or streams, spring or springs, flowing through or along or rising upon any lands belonging to and owned by such corporation in the vicinity of their works, for the purpose of supplying the same with stream or water power, upon the said corporation filing in the office of the prothonotary of the court of common pleas of the county in which such works may be located, a draft or drafts showing the stream or streams, spring or springs, which may have been appropriated for the purposes aforesaid: whereupon it shall not be lawful for any other corporation or individual to divert or use the water of any stream or streams spring or springs thus appropriated, so as to diminish the usual accustomed and natural flow thereof: Provided, that every corporation thus appropriating any stream or streams, spring or springs shall, after using the waters of the same for their manufacturing necessities, return the same into the usual and accustomed channel whereby the water of such stream or streams, spring or springs, have heretofore been accustomed to flow off or along the lands of such corporations.

5. The incorporation of any association of persons for the purposes named in this section shall be held and taken to be of the same force and effect as if the powers and privileges conferred and the duties enjoined had been conferred and enjoined by special act of the legislature, and the franchises granted shall be construed according to the same rules of law and equity as if it has been created by special charter, and

no modification or repeal of this act shall affect any franchises obtained under the provisions of the same.

6. It shall and may be lawful for any incorporated company of this commonwealth, or elsewhere, to subscribe for and take shares of any company incorporated for the purposes named in said section thirty-eight of the said "corporation act of one thousand eight hundred and seventy-four," or to purchase the bonds or stock of such company, or guarantee the payment of said bonds and the interest thereon, or either principal or interest; and it shall and may be lawful for any manufacturing company of this commonwealth, incorporated for the purposes named in said section thirty-eight of the said corporation act of one thousand eight hundred and seventy-four, to subscribe for, purchase, hold, and dispose of bonds or stocks in any incorporated company of this commonwealth, or elsewhere, or to guarantee the payment of such bonds and the interest thereon, or either principal or interest: Provided, that this act shall not be construed to permit any corporation named herein to hold a majority of the stock of any railroad company or other common carrier.

7. A majority of the stock of any such corporation may be held by persons who are not citizens of this state or of the United States. A majority of its directors may be citizens of another state, or of any foreign country; and it may have an office at any place without the state, at which the by-laws of the corporation may authorize the same, meetings of stockholders and directors may be held, and any business of the corporation transacted, but it shall also keep an office within the county in which its principal business in this state is transacted, and an officer of the company there, upon whom service of process may be made; and the property and stock of such corporation shall be at all times liable to taxation under the laws of this commonwealth. Corporations for any of the purposes named in this section, heretofore created by any special or general law of this commonwealth, on accepting the provisions of the constitution, shall be entitled to all the privileges and powers conferred by this act upon such corporations to be hereafter created.

8. That the stockholders of every company incorporated for the purposes named in this section shall only be individually liable for debts due to the laborers, mechanics, or clerks, for services, and in that case for no period exceeding six months.

9. That all laws and parts of laws inconsistent with this section be and the same are hereby repealed, so far as they may relate to or affect any company incorporated under the provisions hereof, or the stockholders of any such company: Provided, this shall not apply to laws imposing taxes upon such corporations.

### **Mechanical, mining, quarrying, manufacturing, and other corporations.**

Sec. 39. Companies incorporated under the provisions of this act for the carrying on of any mechanical, mining, quarrying, manufacturing, or other business, as provided in clause eighteen of the second class, in section two hereof, when not otherwise provided in this act, shall, from the date of the letters patent creating the same, have the powers, and be governed, managed, and controlled as follows:

1. That every such corporation may have a capital stock not exceeding five million dollars, and may by a vote of three-fourths of the general stockholders, at a meeting duly called for the purpose, issue two kinds of stock, namely: general stock and special stock; the special stock shall at no time exceed two-fifths of the actual capital of the corporation, and shall be subject to redemption at par, after a fixed time to be stated in the certificates. Holders of such special stock shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed or half yearly sum or dividend to be expressed in the certificates, not exceeding four per centum, and they shall in no event be liable for the debts of the corporation beyond their stock.

2. That if the proprietor of any share neglect to pay a sum duly assessed thereon, for the space of thirty days after the time appointed for payment, the treasurer of the company may sell by public auction a sufficient number of the shares to pay all assessments then due, with necessary and incidental charges thereon. The treasurer shall give notice of the time and place appointed for such sale, and of the sum on each share, by advertising the same three weeks successively before the sale in some newspaper published in said county; and a deed of the share so sold made by the treasurer, and acknowledged before a justice of the peace, and recorded by the clerk, who shall transfer such shares to the purchaser, who shall be entitled to a certificate therefor.

3. The president and directors, with the treasurer and clerk of such companies, shall, after the payment of the last instalment of the capital stock, make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president, treasurer, clerk, and a majority of the directors, and they shall cause the same to be recorded in the office of the recorder of deeds for said county.

4. If any part of the capital stock of a company is withdrawn and refunded to the stockholders, before the payment of all the debts of the company contracted previously to the recording of a copy of the vote for that purpose in the office of the recorder of deeds, as prescribed in the preceding section, all the stockholders of the company shall be jointly and severally liable for the payment of such debts.

5. If the directors of any company declare any dividend when the company is insolvent, or the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all thereafter contracted, so long as they respectively continue in office: Provided, that the amount for which they shall be liable shall not exceed the amount of such dividend, and if any of the directors are absent at the time of making the dividend or object thereto, at said time, and file their objections in writing with the clerk of the company, they shall be exempted from such liability.

6. The whole amount of the debts which any such company at any time owes, shall not exceed the amount of its capital stock actually paid in, unless such debt be for unpaid purchase-money for lands bought, which debt shall only be a lien upon and collectible from said land; and in case of any excess, the directors under whose administration it occurs, shall be jointly and severally liable to the extent of such excess for all the debts of the company then existing, and for all that are contracted, so long as they respectively continue in office, and until the debts are reduced to the amount of the capital stock: Provided, that any of the directors who are absent at the time of contracting any debts, contrary to the foregoing provisions, or who object thereto, may exempt themselves from liability by forthwith giving notice of the facts to the stockholders, at a meeting which they may call for that purpose. If any certificate made, or any statement or notice given by the officers of a company, under the provisions of this act, is false in any material representation, all the officers who signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company contracted while they were officers or stockholders thereof.

7. Such corporation may, in its corporate name, take, hold, and convey such real and personal estate as is necessary for the purpose of its organization, may carry on its business or so much thereof as is convenient, beyond the limits of the commonwealth, and may there hold any real or personal estate necessary for conducting the same.

8. Every such corporation shall, annually, in September, make, and the president, treasurer, and a majority of the directors, shall sign, swear to, and deposit with the recorder of deeds for said county, a certificate stating the amount of capital stock paid in, the names and number of shares held by each stockholder, the amount invested in real estate and in personal estate, the amount of property owned and debts due to the corporation, on the first day of August next preceding the date of such certificates, and the amount, as nearly as can be ascertained, of existing demands against the corporation at the date of the certificate.

9. When the officers of such corporation have failed to perform the duties prescribed in this act, as to making certificates, the certificates therein mentioned may be made and filed at any time after such failure; and such officers shall not be personally liable for debts of the corporation contracted after the requisitions of this act have been complied with.

10. Process shall be served upon such corporations in the same manner as is now directed by law with regard to other corporations. The court of common pleas of the proper county shall have the same power to dissolve such corporation, upon petitions filed under the corporate seal, which it now has with regard to other corporations. When special stock is created by any corporation, under this act, the general stockholders shall be liable for all debts and contracts until the special stock is fully redeemed.

11. The stockholders of any and all corporations, under this act, shall be personally liable for all sums of money due to laborers, clerks, and operatives, for ser-

vices rendered within six months before demand made upon the corporation, and its neglect or refusal to make payment; and when judgment is obtained against any corporation for wages or labor due to an amount not exceeding two hundred dollars, said corporation shall not be entitled to stay of execution.

12. Any such corporation may, from time to time, acquire and dispose of real estate, and may construct, have, or otherwise dispose of dwellings and other buildings; but no power to sell or release the real estate of such corporation shall be exercised by the directors thereof, unless such power be expressly given in the certificates originally filed, without a consent of a majority of the stock in value consenting and agreeing to such sale or lease before making the same, which consent shall be obtained at a meeting of the stockholders to be held for that purpose, of which meeting thirty days' notice shall be given in one of the newspapers of the proper county, and such consent shall be evidenced only by the written signatures of said stockholders.

Sec. 40. Corporations created by or under the laws of this state, embraced within either of the classes named in section two of this act, the charters whereof are about to expire by lapse of time from their own limitation, may be re-chartered, or the charters thereof renewed, under the provisions of this act, by preparing, having approved and recorded the certificate named in said section for the class of corporation of which the same is one; in addition to the requirements provided in this act for a new corporation, the certificate for a re-charter shall state the fact that it is a renewal of the former charter, naming the corporation and the date of its first charter. It shall also be accompanied with a certificate, under the seal of the corporation, showing the consent of at least a majority in interest of such corporation to such re-charter. It shall also state the financial condition of the said corporation at the date of such certificate, showing capital stock paid in, funded debt, floating debt, estimated value of property and cash assets, if any. It shall expressly accept the provisions of the constitution of this state and of this act, and expressly surrender all privileges conferred upon such corporation by its original charter that are not enjoyed by corporations of its class under this act or general laws of this commonwealth. From the date of recording of such certificate, if the corporation be of the first class named in section two of this act, and from the date of letters patent, if of the second class, the said re-chartered corporation shall be and exist as a new corporation under the provisions of this act and of its said renewed charter; and all of the rights, privileges, powers, immunities, lands, property, and assets, of whatever kind or character the same may be, possessed and owned by the said original corporation, shall vest in and be owned and enjoyed by the said re-chartered corporation, as fully and with like effect as if its original charter had not expired, save as herein and by said certificate expressly stated otherwise; and all suits, claims, and demands by said corporations in existence at the date of such re-charter, shall and may be sued, prosecuted, and collected, under the laws governing the said corporation prior to its re-charter, and all claims and demands of every nature and character in existence at said re-charter, may be collected from and off the said re-chartered corporation, as fully and with like effect as if no change had taken place.

Sec. 41. That in all cases in which, under the provisions of this act, any corporation is permitted to take waters, streams, lands, property, materials, or franchises for the public purposes thereof, and the said corporation cannot agree with the owner or owners of any such waters, streams, lands materials, or franchises, for the compensation proper for the damage done or likely to be done to or sustained by any such owner or owners of such waters, streams, lands, or materials, which such corporation may enter upon, use, or take away, in pursuance of the authority herein given, or by reason of the absence or legal incapacity of any such owner or owners, no such compensation can be agreed upon, the court of common pleas of the proper county, on application thereto, by petition, either by said corporation or by the owner or owners or any one in behalf of either, shall appoint five discreet and disinterested freeholders of the proper county, and appoint a time not less than ten nor more than twenty days thereafter, for said viewers to meet at or upon the premises where the damages are alleged to be sustained, or the property taken, of which time and place five days' notice shall be given by the petitioner to the said viewers and the other party; and the said viewers, or any three of them, having been first duly sworn or affirmed faithfully, justly, and impartially to decide and true report to make concerning all matters and things to be submitted to them, and in relation to which they are authorized to inquire in pursuance of the provisions of this act, and having viewed the premises, they shall



estimate and determine the quantity, quality, and value of said lands, streams, or property so taken or occupied, or to be taken or occupied, or the materials so used or taken away, as the case may be, and having a due regard to and making just allowance for the advantages which may have resulted, or which may seem likely to result to the owner or owners of said streams, land, or materials, in consequence of the making the improvements or conducting the operations of such corporation or of the construction of works for which the property is to be taken; and after having made a fair and just comparison of said advantages and disadvantages, they shall estimate and determine whether any, and if any, what amount of damages has been or may be sustained, and to whom payable, and make report thereof to the said court; and if any damages be awarded, and the report be confirmed by the said court, judgment shall be entered thereon; and if the amount thereof be not paid within thirty days after the entry of such judgment, execution may then issue thereon, as in other cases of debt, for the sum so awarded, and the costs and expenses occurred shall be defrayed by the said corporation; and each of the said viewers shall be entitled to one dollar and fifty cents per day for every day necessarily employed in the performance of the duties herein prescribed, to be paid by such corporation.

In all cases where the parties cannot agree upon the amount of damages claimed, or by reason of the absence or legal incapacity of such owner or owners no such agreement can be made either for lands, streams, water, water-rights, franchises, or materials, the corporation shall tender a bond with at least two sufficient sureties to the party claiming or entitled to any damages, or to the attorney or agent of any person absent, or to the guardian or committee of any one under legal incapacity, the condition of which shall be that the said corporation will pay, or cause to be paid, such amount of damages as the party shall be entitled to receive after the same shall have been agreed upon by the parties, or assessed in the manner provided for by this act: Provided, that in case the party or parties claiming damages refuse or do not accept the bond as tendered, the said corporation shall then give the party a written notice of the time when the same will be presented for filing in court, and thereafter the said corporation may present said bond to the court of common pleas of the county where the land, streams, waters, or materials, are, and if approved the bond shall be filed in said court for the benefit of those interested, and recovery may be had thereon for the amount of damages assessed, if the same be not paid or cannot be made by execution on the judgment in the issue formed to try the question.

The viewers provided for in this section may be appointed before or after the entry for constructing said work or taking materials therefor, and after the filing of the bond hereinbefore provided for; and upon the report of said viewers, or any four of them, being filed in said court, either party, within thirty days thereafter, may file his, her, or their appeal from said report to said court. After such appeal either party may put the cause at issue in the form directed by said court, and the same shall then be tried by said court and a jury, and after final judgment, either party may have a writ of error thereto from the supreme court, in the manner prescribed in other cases; the said court shall have power to order what notices shall be given connected with any part of the proceedings, and may make all such orders connected with the same as may be deemed requisite. If any exceptions be filed with any appeal to the proceedings, they shall be speedily disposed of; and if allowed, a new view shall be ordered; and if disallowed, the appeal shall proceed as before provided.

*Amendment to charters of corporations of first class.*

Sec. 42. [As amended by act of April 17, 1876, P. L. 30.] As often as the corporations named in the first class, specified in the second section of the act to which this is a supplement, including all such corporations now in existence, and academies, colleges, and universities, shall be desirous of improving, amending, or altering the articles and conditions of their charters, it shall and may be lawful for such corporations, respectively, in like manner to specify the improvements, amendments, or alterations which are or shall be desired, and exhibit the same to the court of common pleas of the proper county in which said corporation is situated as aforesaid, where, if said court shall be of opinion such alterations are or will be lawful and beneficial, and do not conflict with the requirements of the statute to which this is a supplement or of the constitution, it shall be the duty of said court to direct notice to be given, as provided in the third sec-



tion of the act to which this is a supplement, of such application, and after decree made and such amendments are recorded, the same shall be deemed and taken to be a part of the charter of the said corporation; and if any two or more such corporations shall desire to consolidate and merge with each other, or one or more within the other, upon application to the court of common pleas of the county in which the corporation is situated, into which the one or more desire to merge or become consolidated with the same, proceedings shall take place as are required on an application to amend; and upon decree being made by said court, and the same being recorded in said county, upon the terms specified in said application, the said corporations with all their rights, privileges, franchises, powers, and liabilities, shall merge and be consolidated into, by the name, style, and title given to the same in such decree, and upon the terms, limitations, and with the powers stated and conferred in said application and decree.

#### Corporation stores prohibited.

Sec. 43. Every manufacturing, mining, or quarrying company incorporated under the provisions of this act shall be confined exclusively to the purposes of its creation, as specified in its charter, and no such company shall manufacture or sell any commodity or articles of merchandise other than those therein specified. No such company shall engage in nor shall it permit any of its employes or officials to engage in the buying or selling upon the lands possessed by it of any wares, goods, or commodities, or merchandise, other than those specified in their charter or necessary for the manufacture of the same. No such company shall permit to be withheld or authorize or direct the withholding of wages due any of its operatives or employes by reason of the sale or furnishing of goods, wares, or merchandise by any person to such operatives or employes, unless the same be withheld by reason of and in obedience to due process of law; but nothing herein contained shall prohibit any such company from supplying to its employes oil, powder, and other articles and implements necessary for or used in mining.

Sec. 44. Every company incorporated by or under the provisions of this act, or accepting the same, except turnpike, bridge, cemetery companies, or building and loan associations, and excepting all these corporations, named in the first class of section two of this act, shall pay to the state treasurer for the use of the commonwealth, a bonus of one-third of one per centum upon the amount of the capital stock which said company is authorized to have, and a like bonus on any subsequent authorized increase thereof. And no company as aforesaid shall have or exercise any corporate powers until the said bonus is paid, and the governor shall not issue letters patent to any company until he is satisfied that the said bonus has been paid to the state treasurer. And no company incorporated as aforesaid shall go into operation, or exercise any corporate powers or privileges until said bonus has been paid. The secretary of the commonwealth shall not permit the filing in his office of any proceedings for increase of capital stock until he is satisfied that the said bonus upon said increase has been paid to the state treasurer.

Sec. 45. That it shall be the duty of the secretary of the commonwealth, every two years, to prepare and publish in separate pamphlet form, a certified list of all charters of incorporations filed in his office, and incorporated under the provisions of this act, stating the style, title, purpose, and location of every such corporation, and he shall prepare and publish a complete alphabetical index to the same. The first list published under this act shall cover the two years ending May thirty-first, Anno Domini one thousand nine hundred and one, and a similar publication shall be made every two years thereafter. The number of copies of said pamphlet to be published shall be ten thousand, of which five hundred shall be for the use of the members of the senate, one thousand for the use of the members of the house of representatives, and eight thousand five hundred for distribution by the secretary of the commonwealth: Provided, that the amount of capital of each corporation for which a charter is granted be set opposite the name of the corporation: Provided further, that all foreign corporations, registering in this state, be placed in same pamphlet, under the head of foreign corporations, and the amount of capital mentioned in the certificate of registration.

Sec. 46. That from and after the passage of this act, the acts of the general assembly, entitled "An act to encourage manufacturing operations in this commonwealth", approved April seventh, one thousand eight hundred and forty-nine;

"An act to enable joint tenants, tenants in common, and adjoining owners of mineral lands in this commonwealth, to manage and develop the same," approved April twenty-first, one thousand eight hundred and fifty-four; "An act relating to corporations for mechanical, manufacturing, mining, and quarrying purposes," approved July eighteenth, one thousand eight hundred and sixty-three; "An act to provide for the incorporation of iron and steel manufacturing companies," approved March twenty-first, one thousand eight hundred and seventy-three, and the several supplements to each of said acts, be and the same are hereby repealed, so far as they provide for the creation of corporations for any of the purposes provided for by this act, or are inconsistent with this act.

**A Supplement to an Act, approved April twenty-ninth, one thousand eight hundred and seventy-four, entitled, "An Act to provide for the Incorporation and Regulation of certain Corporations," providing for the further Regulation of such Corporations and for the Incorporation and Regulation of certain additional Corporations (April 17, 1876, P. L. 30).**

Sec. 11. If any company incorporated under this act, or any of its supplements, shall not proceed in good faith to carry on its work and construct or acquire its necessary buildings, structures, property, or improvements within the space of two years from the date of its letters patent, and shall not within the space of five years thereafter complete the same, the rights and privileges thereby granted to said corporation shall revert to the commonwealth: Provided however, that it shall be lawful for any such corporation who shall have proceeded in good faith as aforesaid, at any time before the expiration of the said period of five years or of any extension thereof, to apply to the court of common pleas in and for the county in which said corporation shall have its principal office for an extension of such time as herein provided. Such application shall be made upon a petition, under the common seal of such corporation and verified by its president or other presiding officer, setting out the grounds of the application, and that the same is made pursuant to a resolution of the board of directors of said company at a meeting called for that purpose, a duly certified copy of which resolution shall be annexed to said petition. Thereupon it shall be the duty of such court to set down said petition for hearing before it upon some day to be fixed by said court, and to direct that notice of such petition shall be given by publication or otherwise as the court shall direct. Upon the day so fixed, or upon such subsequent day or days as the matter may be adjourned to, said court shall proceed to a hearing of said petition, and it being made to appear to said court that the order of notice herein provided for has been complied with, said court may, by order, adjudge and direct that the time of such corporation to complete its necessary buildings, structures, property, or improvements shall be extended for a period not exceeding five years beyond the time fixed by law for the completion thereof, and thereupon upon filing a duly certified copy of such order in the office of the secretary of the commonwealth, the time of such corporation to complete its necessary buildings, structures, property, or improvements shall be extended as provided in such order: Provided further, that when said buildings, structures, property, or improvements are wholly within one county, said application shall be made to the court of common pleas in and for said county.

**An Act supplementary to the Act, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved the twenty-ninth day of April, Anno Domini eighteen hundred and seventy-four, extending its Provisions to all who may have the Right to vote at Elections for Directors, Managers, or Trustees (April 25, 1876, P. L. 47).**

Sec. 1. That in all elections for directors, managers, or trustees of any corporation created under the provisions of this statute, or accepting its provisions, each member or stockholder or other person having a right to vote, may cast the

whole number of his votes for one candidate, or distribute them upon two or more candidates as he may prefer, that is to say: If the said member or stockholder or other person having a right to vote, own one share of stock or has one vote, or is entitled to one vote for each of six directors by virtue thereof, he may give one vote for each of said six directors, or six votes for any one thereof, or a less number of votes for any less number of directors, whatever may be the actual number to be elected, and in this manner may distribute or cumulate his votes as he may see fit; all elections for directors or trustees shall be by ballot, and every share of stock shall entitle the holder thereof to one vote, in person or by proxy, to be exercised as provided in this section.

**A further Supplement to an Act, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved April twenty-ninth, one thousand eight hundred and seventy-four, providing for the further Regulation of such Corporations (June 17, 1887, P. L. 411).**

Sec. 1. That whenever the stockholders of any corporation incorporated under the act of April twenty-ninth, one thousand eight hundred and seventy-four, or any other law of this commonwealth, shall, at a meeting called for the purpose, decide, by a majority vote of those present either in person or by proxy, to elect a portion of their directors for a term or terms longer than one year, it may and shall be lawful for such corporation, at the next ensuing election, to divide the directors or managers, which are to be chosen, into two, three, or four classes, and to elect the first class to serve for the term of one year, and the second, third, or fourth to serve for two, three, or four years, respectively, and at all ensuing elections of said corporations, the stockholders shall only elect the number of directors necessary to take the place of those whose term of office shall then expire, and such directors shall be elected for the longest term for which any class may have been elected as hereinbefore provided.

Sec. 2. Such classification, where already made by charter, is hereby declared valid.

**An Act to amend the first Section of an Act, entitled "A Supplement to an Act, entitled 'An Act to provide for the Incorporation and Regulation of certain Corporations, approved April twenty-nine, one thousand eight hundred and seventy-four,' authorizing the Formation of Corporations for Profit by voluntary Association of three or more Persons, one of whom, at least, must be a Citizen of this Commonwealth," said Supplement approved the twenty-ninth day of May, one thousand nine hundred and one; and to extend the Provisions of said Act to all Corporations for Profit embraced within Corporations of the second Class, defined in Section two (2), and the various Supplements to section two (2) of the Act of April twenty-ninth, one thousand eight hundred and seventy-four, and confirming all Charters granted under the said Supplements, to Corporations which have been formed under the various Supplements to the said Section two (2) of the Act of April twenty-ninth, one thousand eight hundred and seventy-four, by the Association of three or more Persons, one of whom at least was a Citizen of this Commonwealth (April 23, 1903, P. L. 273).**

Sec. 1. That hereafter corporations for profit, embraced within corporations of the second class, defined in section two (2) and the various supplements to said section two (2) of the act to which this is a supplement, may be formed, under the provision of said act, by voluntary association of three or more persons, and the charter of an intended corporation must be subscribed by two or more

persons, one of whom, at least, must be a citizen of this commonwealth. All corporations formed under the provisions of the several supplements of section two (2) of the act of April twenty-ninth, one thousand eight hundred and seventy-four, by the voluntary association of three or more persons, and the charter of said corporations having been subscribed by not less than two persons, one of whom was a citizen of this commonwealth, and in which charters have been granted by the governor of the commonwealth of Pennsylvania, be and the same are hereby ratified and confirmed, to the same extent as though the said several supplements to the act of April twenty-ninth, one thousand eight hundred and seventy-four, had been a part and parcel of the original section two (2) of the act of April twenty-ninth, one thousand eight hundred and seventy-four.

**An Act amending the third Section of a Supplement to an Act, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved April twenty-nine, one thousand eight hundred and seventy-four, "providing for the Improvement, Amendment and Alteration of the Charters of Corporations of the Second Class, and authorizing the Incorporation of Traction Motor Companies," approved the thirteenth day of June, Anno Domini one thousand eight hundred and eighty-three; requiring Corporations to file a Certificate with the Governor of the Commonwealth, setting forth that all Reports required by the Auditor General of the Commonwealth have been duly filed, and that all taxes due the Commonwealth have been paid, before the Improvement, Amendment or Alteration of the Charter of any Corporation (March 31, 1905, P. L. 93).**

Sec. 3. The said corporation shall prepare a certificate, under its corporate seal, setting forth the character and objects of the proposed improvement, amendment, or alteration of its charter, or the instrument upon which the said corporation is formed or established; also, that all reports required by the auditor general of the commonwealth have been filed, and that all taxes due the commonwealth of Pennsylvania have been paid; acknowledged by the president and secretary of said corporation and before the recorder of deeds of the county wherein such corporation has its principal office or place of business; which certificate, together with proof of publication of notice, as provided in section two of the supplement to an act of which this is an amendment, shall then be produced to the governor of the commonwealth, who shall examine the same, and, if he finds it to be in proper form, and that such improvements, amendments or alterations are, or will be lawful and beneficial, and not injurious, to the community, and are in accord with the purpose of the charter, and that all reports required by the auditor general of the commonwealth have been duly filed, and that all taxes due the commonwealth of Pennsylvania have been paid, he shall approve thereof and endorse his approval thereon, and direct letters patent to issue, in the usual form, reciting the said improvements, amendments, or alterations; and the said certificate shall then be recorded in the office of the secretary of the commonwealth, and, with all its endorsements, shall then be recorded in the office for the recording of deeds in and for the proper county, where the principal office or place of business of said corporation is located; and from thenceforth the same shall be deemed and taken to be a part of the charter or instrument upon which said corporation was formed or established, to all intents and purposes, as if the same had originally been made a part thereof: Provided, that nothing herein contained shall authorize the amendment, alteration, improvement, or extension of the charter of any gas or water company, so as to interfere with or cover territory previously occupied by any other gas or water company.

**An Act to amend Section three of a Supplement to an Act, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved the twenty-ninth day of April, one thousand eight hundred and seventy-four, providing for the Merger and Consolidation of certain Corporations, approved the twenty-ninth day of May, one thousand nine hundred and one; requiring the Filing of all Reports required by the Auditor General, and the Payment of all Taxes due the Commonwealth of Pennsylvania, by Corporations, before Merger or Consolidation (March 31, 1905, P. L. 95).**

Sec. 3. Upon the filing of said certificates and agreement, or copy of agreement, in the office of the Secretary of the Commonwealth, the said merger shall be deemed to have taken place and the said corporations to be one corporation under the name adopted in and by said agreement, possessing all the rights, privileges, and franchises theretofore vested in each of them, and all the estate and property, real and personal, and all the rights of action of each of said corporations, shall be deemed and taken to be transferred to and vested in the said new corporation, without any further act or deed: Provided that all rights of creditors and all liens upon the property of each of said corporations shall continue unimpaired, and the respective constituent corporations may be deemed to be in existence to preserve the same; and all debts, duties, and liabilities of each of said constituent corporations shall thenceforth attach to the said new corporation, and may be enforced against it to the same extent and by the same process as if said debts, duties, and liabilities had been contracted by it. But such merger and consolidation shall not be complete, and no such consolidated corporation shall do any business of any kind, until it shall have first obtained from the governor of the commonwealth new letters patent, and shall have paid to the state treasurer a bonus of one-third of one per centum on all its corporate stock in excess of the amount of the capital stock of the several corporations so consolidating, upon which the bonus required by law had been theretofore paid: And provided, further, that new letters patent of such consolidated corporation shall not be issued by the governor of the commonwealth until each and every corporation, entering and forming the consolidated corporation, shall have filed with the secretary of the commonwealth a certificate from the auditor general of the commonwealth, setting forth that all reports required by the auditor general of the commonwealth have been duly filed, and that all taxes due the commonwealth of Pennsylvania have been paid.

**An Act relating to Corporations for Mechanical, Manufacturing, Mining, and Quarrying Purposes (July 18, 1863, P. L. 1864, 1102).<sup>1)</sup>**

Sec. 1. That three or more persons who shall have associated themselves together by articles of agreement in writing, for the purpose of carrying on any mechanical, mining, quarrying, or manufacturing business in this commonwealth, except that of distilling or manufacturing intoxicating liquors, and shall have complied with the provisions of this act, shall be and remain a corporation, under any name indicating their corporate character, assumed in their articles of association, and which is not previously in use by any other corporation or company.

Sec. 2. The purposes for and the place within which such corporation is established, shall be distinctly and definitely specified in the articles of association; and such corporation shall not direct its operations or appropriate its funds to any other purpose.

Sec. 3. The first meeting of such corporation, shall be called by a notice, signed by one or more of the parties to such an agreement, stating the time, place, and purposes of the meeting, a copy of which shall, three weeks at least before the meeting, be given to each member, or published in some newspaper printed in the county in which said corporation proposes to conduct its business.

<sup>1)</sup> See Act, April 29, 1874, sec. 16.

Sec. 4. If doubts arise whether any such corporation is legally organized, the stockholders, at a meeting specially called for the purpose, under their by-laws, or by notice, as required by the preceding section, may by vote confirm such organization, and all proceedings under it; and by so doing, and depositing one copy of such vote with the recorder of deeds of said county, and one with the secretary of the commonwealth, such corporation, and the acts of the company, shall be held legal and valid as if the original organization had been legal.

Sec. 5. Said corporations may make by-laws, not repugnant to the laws of the commonwealth, for the regulation of their business, with penalties for the breach thereof, not exceeding twenty dollars for each offence.

Sec. 6. The business of the company shall be managed and conducted by a president, board of directors, a clerk, treasurer, and such other officers, agents, and factors, as the company authorizes for that purpose.

Sec. 7. The directors, clerk, and treasurer shall be chosen annually by the stockholders, and shall hold their offices until others are chosen and qualified in their stead; the manner of such choice, and of choice or appointment of all other agents, factors, and officers of the company, shall be prescribed by the by-laws.

Sec. 8. The number of directors shall not be less than three; one of them shall be chosen president by the directors, or by the company, as the by-laws shall direct.

Sec. 9. The clerk shall be sworn, and shall record all the votes of the company in a book to be kept for that purpose, and perform such other duties as shall be assigned to him; the treasurer shall give bond in such sum, and with such sureties, as shall be required by the by-laws, for the faithful discharge of his duties.

Sec. 10. At all meetings of the company, absent stockholders may vote by proxy, authorized in writing; but no proxy shall be valid, unless executed and dated within six months previous to the meeting at which it is used, if the maker thereof resides in the United States; and no person shall, as proxy or attorney, cast more than fifty votes, unless all the shares so represented by him belong to one person; and no officer of the corporation, as proxy or attorney, shall cast more than twenty votes; every company may determine by its by-laws what number of stockholders shall attend, either in person or by proxy, or what number of shares, or amount of interest, shall be represented, at any meeting, to constitute a quorum; if the quorum is not so determined, a majority in interest of the stockholders shall constitute a quorum.

Sec. 11. The capital stock of every company, the amount whereof has been fixed and limited by such company according to law, shall remain so fixed, subject to be increased or reduced pursuant to the provisions of this act.

Sec. 12. The amount of the capital stock of every company not organized shall be fixed and limited by the company, and shall, at its first meeting, be divided into shares, of which a record shall be made by the clerk.

Sec. 13. Every company may, at any meeting called for the purpose, increase its capital stock, and the number of shares therein but the stock shall not in any case exceed the amount authorized by this act.

Sec. 14. Every company may by a vote of three-fourths of the general stockholders, at a meeting duly called for the purpose, issue two kinds of stock, namely, general stock and special stock; the special stock shall at no time exceed two-fifths of the actual capital of the corporation, and shall be subject to redemption, at par, after a fixed time, to be stated in the certificates; holders of such special stock shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed or half yearly sum or dividend, to be expressed in the certificates, not exceeding four per centum, and they shall in no event be liable for the debts of the corporation beyond their stock.

Sec. 15. Shares of the capital stock may be transferred by the proprietor, by an instrument in writing under his hand, and recorded by the clerk of the corporation, in a book to be kept for that purpose; the purchaser named in such instrument so recorded, shall, on producing the same to the treasurer, and delivering to him the former certificate, be entitled to a new certificate.

Sec. 16. Every company may, from time to time, at a legal meeting called for the purpose, assess upon each share of stock such sums of money as the company may think proper, not exceeding in the whole the amount at which each share was originally limited; and such sums assessed, shall be paid to the treasurer at such times, and in such instalments, as the company directs; no note or obligation given

by a stockholder, whether secured by pledge or otherwise, shall be considered as payment of any part of the capital stock.

Sec. 17. If the proprietor of any share neglect to pay a sum duly assessed thereon, for the space of thirty days after the time appointed for payment, the treasurer of the company may sell by public auction a sufficient number of the shares to pay all assessments then due, with necessary and incidental charges thereon.

Sec. 18. The treasurer shall give notice of the time and place appointed for such sale, and of the sum on each share, by advertising the same three weeks successively before the sale, in some newspaper published in said county: and a deed of the shares so sold, made by the treasurer and acknowledged before a justice of the peace, and recorded by the clerk, as directed in section number sixteen, shall transfer said shares to the purchaser, who shall be entitled to a certificate therefor.

Sec. 19. The president and directors, with the treasurer and clerk, of such companies shall, after the payment of the last instalment of the capital stock, make a certificate stating the amount of the capital so fixed and paid in: which certificate shall be signed and sworn to by the president, treasurer, clerk, and a majority of the directors, and they shall cause the same to be recorded in the office, of the recorder of deeds for said county.

Sec. 20. If a company increases its capital stock, the officers named in the last preceding section, after payment of the last instalment of such additional stock, shall make a certificate of the amount so added and paid in, and sign and swear to the same, and cause it to be recorded in the manner herein provided.

Sec. 21. If any of said officers neglect or refuse to perform the duties required of them in the two last preceding sections, they shall be jointly and severally liable for all the debts of the company contracted after the expiration of thirty days from the payment of the last instalment, and before such certificate is so recorded.

Sec. 22. Every company may, by a vote at any meeting called for the purpose reduce its capital stock, in which case a certified copy of the vote shall be recorded, in the office of the recorder of deeds of said county, and in default thereof the directors of the company shall be jointly and severally liable for all the debts of the company, contracted after thirty days from said reduction, and before the recording of such copy.

Sec. 23. If any part of the capital stock of a company is withdrawn, and refunded to the stockholders, before the payment of all the debts of the company contracted previously to the recording of a copy of the vote for that purpose, in the office of the recorder of deeds, as prescribed in the preceding section, all the stockholders of the company shall be jointly and severally liable for the payment of such debts.

Sec. 24. The amount of capital stock of such corporation shall be fixed and limited in its articles of association; the corporation may increase or diminish its amount, and the number of shares, at any meeting of the stockholders specially called for the purpose; but the capital shall never be less than five thousand dollars, nor more than five hundred thousand dollars, and no share shall be issued for less than its par value.

Sec. 25. If the directors of any company declare any dividend when the company is insolvent, or the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all thereafter contracted, so long as they respectively continue in office: Provided, that the amount for which they shall be liable shall not exceed the amount of such dividend; and if any of the directors are absent at the time of making the dividend, or object thereto at said time, and file their objections in writing with the clerk of the company, they shall be exempted from such liability.

Sec. 26. No loan of money shall be made by such company to any stockholder therein, and if any such loan is made to a stockholder, the officers who make it, or assent thereto, shall be jointly and severally liable to the extent of such loan and interest, for all the debts of the company contracted before the repayment of the sum so loaned.

Sec. 27. The whole amount of the debts which any such company at any time owes, shall not exceed the amount of its capital stock actually paid in; and in case of any excess, the directors under whose administration it occurs shall be jointly and severally liable, to the extent of such excess, for all the debts of the company then existing, and for all that are contracted, so long as they respectively continue

in office, and until the debts are reduced to the amount of the capital stock, Provided that any of the directors who are absent at the time of contracting any debts, contrary to the foregoing provisions, or who object thereto, may exempt themselves from liability by forthwith giving notice of the facts to the stockholders, at a meeting which they may call for that purpose.

Sec. 28. If any certificate made, or any statement or notice given, by the officers of a company under the provisions of this act, is false in any material representation, all the officers who signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company contracted while they were officers or stockholders thereof.

Sec. 29. Any officer or stockholder of a company who voluntarily, or by compulsion, pays a debt of the company for which he is made liable by this act, may recover the amount so paid, in an action against the company for money paid for its use; in which action the property of the company only shall be liable to be taken, and not the property of any stockholder.

Sec. 30. Such corporation may, in its corporate name, take, hold, and convey such real and personal estate as is necessary for the purpose of its organization; may carry on its business, or so much thereof as is convenient, beyond the limits of the commonwealth, and may there hold any real or personal estate necessary for conducting the same.

Sec. 31. Before such corporation commences business, the president, treasurer, and a majority of the directors shall sign, swear to, and deposit with the auditor general of the commonwealth, a certificate, setting forth the corporate name and purposes of the association, the amount of the capital stock, the amount already paid in, and the par value of the shares in the corporation, and shall file a copy thereof with the recorder of deeds in said county, to be by him recorded in a book kept for the purpose, within thirty days after the payment of any instalment called for by the directors; a certificate thereof shall be in like manner signed, sworn to, deposited, filed, and recorded.

Sec. 32. When the capital stock and shares of any such corporation are increased or reduced, under the provisions of this act, a certificate thereof shall be made, signed, sworn to, deposited, and executed in manner aforesaid.

Sec. 33. Every such corporation shall annually, in September, make, and the president, treasurer, and a majority of the directors shall sign, swear to, and deposit, with the recorder of deeds for said county, a certificate stating the amount of capital stock paid in, the names and number of shares held by each stockholder, the amount invested in real estate and in personal estate, the amount of property owned and debts due to the corporation on the first day of August next preceding the date of such certificates, and the amount as nearly as can be ascertained, of existing demands against the corporation at the date of the certificate.

Sec. 34. If the officers of any such corporation violate the provisions of section 2, or neglect or refuse to perform the duties required in sections 32, 33, and 34, they shall be jointly and severally liable for all debts of the corporation contracted during the continuance of such violation, refusal or neglect.

Sec. 35. When the officers of such corporation have failed to perform the duties prescribed in this act, as to making certificates, the certificates therein mentioned may be made and filed at any time after such failure; and such officers shall not be personally liable for debts of the corporation contracted after the requisitions of this act have been complied with.

Sec. 36. Process shall be served upon such corporations in the same manner as is now directed by law with regard to other corporations.

Sec. 37. The court of common pleas of the proper county shall have the same power to dissolve such corporation, upon petitions filed under the corporate seal, which it now has with regard to other corporations.

Sec. 38. When special stock is created by any corporation under this act, the general stockholders shall be liable for all debts and contracts until the special stock is fully redeemed.

Sec. 39. The stockholders of any and all corporations under this act, shall be personally liable for all sums of money due to laborers and operatives, for services rendered within six months before demand made upon the corporation, and its neglect or refusal to make payment.



Sec. 40. Any member or stockholder who pays, on a judgment or otherwise, more than his proportional share of any debt against the company, shall have a claim for contribution against the other members or stockholders.

Sec. 41. No stockholder or officer in such corporation shall be held liable for its debts or contracts, unless a judgment is recovered against it, and the corporation shall neglect, for the space of thirty days after demand made, on execution, to pay the amount due, with the officers' fees, or exhibit to him real or personal estate of the corporation, subject to be taken on execution, sufficient to satisfy the same, and the execution shall be returned unsatisfied.

Sec. 42. After the execution shall be so returned, the judgment creditor, or any other creditor, may file a bill in equity, in behalf of himself and all other creditors of the corporation, against it and all persons who were stockholders therein at the time of the commencement of the suit in which such judgment was recovered, or against all the officers liable for its debts and contracts, for the recovery of the sums due from said corporation, to himself and such other creditors, for which the stockholders or officers may be personally liable, by reason of any act or omission on its part or that of its officers, as stated in preceding sections of this act, setting forth the judgment and proceedings thereon, and the grounds upon which it is expected to charge the officers or stockholders personally.

Sec. 43. Such sums as may be decreed to be paid by the stockholders in such suit in equity, shall be assessed upon them in proportion to the amounts of stock by them respectively held, at the time when the suit in which said judgment was recovered was begun; but no stockholder shall be liable to pay a larger sum than the amount of stock held by him at that time, at its par value.

Sec. 44. The estates and funds in the hands of executors, administrators, guardians, or trustees, shall not be liable to greater extent than the testator, intestate, ward, or person interested in the trust fund would have been, if living and competent to act and hold the stock in his own name.

Sec. 45. If, during the pendency of any suit in equity, as herein provided one of the defendants shall de cease, the suit shall not abate thereby, and his estate in the hands of his executor or administrator shall be liable to the same extent as he would be, if living; such executor or administrator may voluntarily appear, and become a party to such suit, or may be summoned by plaintiff.

Sec. 46. After a suit in equity to enforce the liability of stockholders or officers shall have been commenced, it shall not be competent for the plaintiff to dismiss the same without order of court, and such notice to other creditors, as the court may deem reasonable under the circumstance.

Sec. 47. The officers and stockholders of corporations organized under this act, shall not be individually liable for the debts of said corporation, otherwise than in this act provided.

Sec. 48. The provisions of this act may be amended, or repealed, at the pleasure of the legislature.

Sec. 49. The provisions of this act shall not apply to the counties of Northumberland, Montgomery, Bucks, Luzerne, Columbia, Montour, Sullivan, Wyoming, Lehigh, Carbon, Armstrong, Schuylkill, Northampton, Westmoreland, Berks, Adams, and York.

This act was subsequently extended to Berks, Armstrong, Westmoreland, Lehigh, Northampton, Schuylkill, Montgomery, Wyoming, Luzerne, York, Carbon, Columbia, Northumberland, Bucks, and Cumberland counties.

### Supplement to an Act relating to Corporations for Mechanical, Manufacturing, Mining, and Quarrying Purposes, approved July 18, 1863 (April 29, 1864, P. L. 660).

Sec. 1. That it shall be lawful for any company organized under the act to which this is a supplement, to increase its capital stock, in the manner provided by said act, to an amount not to exceed one million of dollars: Provided, there shall have been actually paid in, on the whole amount of capital stock of said company, a sum not less than ten per cent.

Sec. 2. Upon the filing, with the auditor general, the proper certificate provided in the 31st section of the act to which this is a supplement, he shall certify

the same to the governor, which together with the certificate of the recorder of deeds of the proper county, that the requisite certificate of the formation of said company has been filed in his office, the governor shall issue his letters patent to said corporation, in due form of law.

**A further Supplement to an Act, entitled "An Act relating to Corporations for Mechanical, Manufacturing, Mining, and Quarrying Purposes," approved July 18, 1863 (March 27, 1867, P. L. 47).**

Sec. 1. That the provisions of the act entitled "An act relating to corporations for mechanical, manufacturing, mining, and quarrying purposes," approved the 18th day of July, Anno Domini 1863, and the supplements thereto, are hereby extended so as to embrace all companies hereafter to be formed, for the purchase and sale of patents granted by the authority of the United States, and of rights and licenses under said patents, and for the manufacture and sale of patented articles.

**A further Supplement to the Act relating to Corporations for Mechanical, Manufacturing, Mining and Quarrying Purposes, approved July 18, 1863 (March 3, 1868, P. L. 45).**

Sec. 1. That the provisions of an act entitled, "An act relating to corporations for mechanical, manufacturing, mining, and quarrying purposes," approved the 18th day of July 1863, and of the supplement thereto, approved the 29th day of April, 1864, are hereby extended to and shall include the business of printing and publishing a newspaper, and of job printing in connection therewith.

**An Act relating to Companies incorporated under the general Mining Laws of this Commonwealth (May 8, 1871, P. L. 265).**

Sec. 2. That the directors of any mining company incorporated under an act relating to corporations for mechanical, manufacturing, mining, and quarrying purposes, approved July 18, 1863, shall not have power to sell, convey, or lease any mine or mines, held by said company, without having first obtained the written consent of the stockholders owning a majority of the stock; and so much of the provisions of any act, or the supplement to any act, as are inconsistent herewith, be and the same are hereby repealed.

**A further Supplement to an Act relating to Corporations for Mechanical, Manufacturing, Mining, and Quarrying Purposes, approved July 18, 1863, extending the Provisions of the same to the Building or Erection of Piers for Wharves, Bridges, etc., and for other Submarine Operations (March 27, 1873, P. L. 49).**

Sec. 1. That the provisions of an act relating to corporations for mechanical, mining, and quarrying purposes, approved July 18, 1863, and of the supplements thereto, are hereby extended to and shall include the building or erection of piers for wharves, bridges, et cetera, under water, and for other submarine operations.

**A further Supplement to an Act relating to Corporations for Mechanical, Manufacturing, Mining, and Quarrying Purposes, approved July 18, 1863, extending the Provisions thereof to Dealers in Petroleum (April 9, 1873, P. L. 66).**

Sec. 1. That the provisions of the act relating to corporations for mechanical, manufacturing, mining, and quarrying purposes, approved July 18, 1863, and the

supplement thereto, so far as applicable, be and the same are hereby extended to, and shall include the business of buying, producing, storing, refining, transporting, selling, and dealing generally in petroleum; and such corporations may be formed to operate in any or all these departments, as shall be indicated in their respective articles of association.

### **An Act to encourage Manufacturing Operations in this Commonwealth (April 7, 1849, P. L. 563).**

Sec. 24. It shall be the duty of the directors of every such company to cause a book to be kept by the treasurer or secretary thereof, at the office or principal place of business of the company, which shall contain the names of all persons, alphabetically arranged, who are or who shall within one year have been stockholders of such company, showing their places of residence, the number of shares of the stock held by them respectively, and the time when they respectively became the owners thereof, and the amount paid on such shares, and the total amount of the capital stock paid in; which book shall at the end of the year be carefully preserved in the office of the company for future reference, and shall, during the usual business hours of the day, on every business day, be open for the inspection of all persons who may desire to inspect the same; and any and every person shall have the right to make extracts from such books, and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it is transferred liable for the debts of the company, according to the provisions of this act, until it shall have been entered therein as required by this section, by an entry showing by and to whom the same has been transferred; such book shall be prima facie evidence of the facts therein stated in favor of the plaintiff in any suit or proceeding against such company or against any one or more stockholders; and if any such company shall neglect or refuse to keep such book, or to make or cause to be made any proper entry therein, or shall, on application made to any director or officer thereof, neglect or refuse to exhibit the same, or to allow extracts to be taken therefrom, as hereinbefore required, such company shall forfeit and pay to the party aggrieved fifty dollars for each and every day it shall so neglect or refuse as aforesaid, recoverable by said party as in other cases of claims against such company.

### **An Act supplementary to the Acts relating to Mining and Manufacturing Companies (April 17, 1869, P. L. 71).**

Sec. 2. The treasurer of every manufacturing or mining company, now incorporated or hereafter incorporated under any special or general law of this commonwealth, shall keep the moneys of the corporation in a separate bank account, to his credit as treasurer, under the penalty of fifty dollars for every day he shall fail to comply with said duty, to be recovered at the suit of any informer, in an action of debt; and every director of any such corporation who shall consent to such breach of duty, or, having knowledge thereof, shall not enter his protest on the minutes of the company, shall be liable to the same penalty, to be recovered in like manner.

### **An Act conferring Equity Jurisdiction upon the Courts of Common Pleas in all Cases of the Mortgages of the Property or Franchises of Coal, Iron, Steel, Lumber, or Oil, or Mining, Manufacturing, or Transportation Companies (March 23, 1877, P. L. 32).**

Sec. 1. That each of the several courts of common pleas of this commonwealth shall have and exercise all the powers of a court of chancery, in all cases of or for enforcing rights under mortgages of the property or franchises of any coal, iron, steel, lumber, or oil, or any mining, manufacturing, or transportation corporation, where such property or franchises, or any part thereof, shall be situate or exercisable within the limits of this commonwealth, and belong to or be exercisable by any domestic corporation or any foreign corporation under permission granted by the laws of this commonwealth.

Sec. 2. That when the corporation shall have either voluntarily appeared to any suit brought under or covered by this act, or shall have been duly served with process, the court in which such suit is or shall be pending shall have jurisdiction of the subject matter, irrespective of the local situation in this state of the mortgaged premises; and its process to enforce any interlocutory or final order or decree made by such courts, in relation to the preservation, custody, sale, or other disposition of the mortgaged premises, may be executed within any county of the state: Provided, that where such mortgage shall have been given by a corporation having a corporate existence in this state only, the proceedings upon the said mortgage shall be had either in the county within which the principal office of the said company is located, or in the county in which all, or part of the mortgaged premises is situated.

**An Act to enable Mining, Manufacturing, and Trading Companies  
to Wind up their Affairs, after the Expiration of their Charters  
(May 21, 1881, P. L. 30).**

Sec. 1. That all corporations for mining, manufacturing, or trading purposes, whether created by general or special acts of assembly, whose charters may have expired, or may hereafter expire, or which may have been dissolved or may hereafter be dissolved by any judicial decree, may bring suits, and maintain and defend suits already brought, for the protection and possession of their property, and the collection of debts and obligations owing to or by them, and sell, convey, and dispose of their property, and make title therefor, as fully and effectually as if their charters had not expired, or such decree had not been made; and the officers last elected, or the survivors of them, shall be officers to represent said corporations for such purposes, and, if no officers survive, the stockholders may elect officers under their by-laws: Provided, that this act shall be construed only so as to enable said corporations to realize and divide their assets, and wind up their affairs, and not to transact new business.

**An Act to validate the Exercise of Franchises of Manufacturing Corporations whose Charters have expired, and to validate the Conveyances and other Instruments of said Corporations (May 16, 1895, P. L. 84).**

Sec. 1. That no exercise of franchise, grant, bargain and sale, feoffment, deed of conveyance, release, assignment, or other assurance of lands, tenements, and hereditaments, contract or agreement whatsoever, made, executed, and delivered prior to June first, one thousand eight hundred and ninety-five, by any corporation of this commonwealth, or by the successor of any manufacturing corporation, shall be deemed, held, or adjudged invalid or defective or insufficient in law by reason of the expiration of the term of its charter; but all and every such exercise of franchises, grant, bargain and sale, feoffment, deed of conveyance, release, assignment, or other assurance, contract, or agreement so made, executed, and delivered shall be as good, valid, and effectual in law and fact as if the charter of such corporation, or of the successor of such corporation, had not expired or had been renewed or extended: Provided, however, that such corporation or the successor thereof has accepted the provisions of the constitution of this commonwealth and of the act of assembly, entitled "An act to provide for the incorporation and regulation of certain corporations," approved the twenty-ninth day of April Anno Domini one thousand eight hundred and seventy-four: And provided further, that not more than ten years has elapsed since the expiration of the term of such charter.

**A further supplement to "An Act to provide for the Incorporation and Regulation of certain Corporations," approved April twenty-ninth, one thousand eight hundred and seventy-four (June 25, 1895, P. L. 310).**

Sec. 2. That the charters of all manufacturing corporations granted in accordance with the provisions of the present constitution of this commonwealth, and the

act of general assembly, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April twenty-ninth, one thousand eight hundred and seventy-four, and the charters of all manufacturing corporations that have accepted the provisions of the said constitution and act of assembly, which charters were limited in their duration by the articles of association or by the act of assembly under which they were granted and have now expired or shall hereafter expire, are hereby extended for a period of twenty-five years from the date of the expiration of said charters: Provided, that a bona fide organization has taken place and business has been commenced in good faith within a period of two years from the date of the granting of said charters: Provided further, that manufacturing concerns availing themselves of the provisions of this act shall first pay into the treasury of this commonwealth the fee and bonus upon their capital stock now fixed by law for the renewal or extension of a corporate charter. And provided further, that upon the payment of said fees and bonus and the production to the secretary of the commonwealth of evidence that the terms of this act have been complied with, letters patent shall issue to said manufacturing corporation.

### **An Act to authorize Corporations to issue Preferred Stock (April 3, 1872, P. L. 37).**

Sec. 1. That it shall be lawful for any company now or hereafter incorporated, by or under any general law of this commonwealth, to issue, with the consent of a majority in interest of its stockholders, preferred stock of the company, not exceeding at any time one-half of the capital stock of the corporation; the holders of which preferred stock shall be entitled to receive such dividends thereon, not exceeding twelve per cent. per annum, as the board of directors of said company may prescribe, payable out of the net earnings of the company; and the holders of said preferred stock shall not be liable for any debts of the company.

### **A Supplement to an Act, entitled, "An Act to authorize Corporations to issue Preferred Stock," approved the third day of April, Anno Domini one thousand eight hundred and seventy-two (April 28, 1873, P. L. 79).**

Sec. 1. That any company authorized by the act to which this is a supplement, to issue preferred stock, may issue the same in different classes, to be distinguished in such manner as the directors of such company may prescribe; and they may give to the various classes such order of preference in the payment of the dividends, or in the rate of dividends thereon, or in the redemption of the principal thereof, as may be approved by the holders of a majority of the stock of the company; and the company shall have the right to redeem its preferred stock upon such terms as may be prescribed in the issue thereof; and it may specifically appropriate for the payment of the dividends upon any class of stock, or for the redemption of the principal thereof, the revenues from any specific department of its business or the proceeds of any specified portions of its assets or property: Provided that no injustice shall thereby be done to the existing rights of other stockholder or creditors of the company.

### **An Act amending an Act, entitled "An Act defining Evidence of Stock Ownership in Corporations, and for determining the Right to vote thereon," approved May 7, one thousand eight hundred and eighty-nine, further defining Evidence of Stock Ownership and the Right to vote thereon (May 26, 1893, P. L. 141).**

Sec. 1. That the certificate of stock and transfer books, or either, of any corporation of this commonwealth, shall be prima facie evidence of the right of the person named therein to vote thereon as the owner, either personally or by due proxy. If however objection is taken by an actual stockholder at the time the ballot is tendered, accompanied by a written statement under oath that the person in whose name such

stock stands on such certificate, or transfer books, and who is offering to vote thereon either in person or by proxy, is not the owner thereof, either in his own right or as active trustee with the character of his trusteeship disclosed on the face of said certificate, or transfer books, in connection with his name, it shall be the duty of the judges of election to inquire and determine summarily whether the facts are as represented in such statement, and if so, the vote or votes so tendered shall be rejected: Provided however, that nothing in this section shall be held to prohibit executors, administrators, guardians, or trustees created by last will and testament, or by decree of court, from voting on stock standing in the name of a decedent, minor, or other beneficiary.

Sec. 2. That in cases where, under the terms of the preceding section, the person named in the certificate, or transfer books, is not permitted to vote, the beneficial owner of such stock shall have the right to vote thereon upon furnishing to the judges of election satisfactory evidence of ownership.

Sec. 3. That as between the pledgor and the pledgee of capital stock pledged to secure a specific loan with a fixed period or periods of maturity, the right to vote shall be determined as follows: First, by the written agreement of the pledgor and pledgee. Second, in all other instances the pledgor shall be held to be the owner and entitled to the right to vote.

### **An Act to provide for the Manner of Reducing the Capital Stock of Corporations (June 8, 1893, P. L. 351).**

Sec. 1. That the capital stock of any corporation created by general or special law may be reduced, from time to time, by the consent of the persons or bodies corporate holding the larger amount in value of the stock of such corporation, provided that such reduction shall not be below the minimum amount of capital stock required by law for the formation of corporations formed for similar purposes.

Sec. 2. That any corporation desirous of reducing its capital stock as provided by this act shall, by a resolution of its board of directors, call a meeting of its stockholders therefor, which meeting shall be held in its chief office or place of business in this commonwealth, and notice of the time, place, and object of said meeting shall be published once a week for sixty days prior to such meeting in at least one newspaper published in the county, city, or borough wherein such office or place of business is situate.

Sec. 3. At the meeting called pursuant to the second section of this act, an election of the stockholders of such corporation shall be taken for or against such reduction, which shall be conducted by three judges, stockholders of said corporation, appointed by the board of directors to hold said election, and if one or more of said judges be absent, the judge or judges present shall appoint a judge or judges who shall act in the place of the judge or judges absent, and who shall respectively take and subscribe an oath or affirmation before an officer authorized by law to administer the same well and truly and according to law to conduct such elections to the best of their ability, and the said judges shall decide upon the qualification of voters, and when the election is closed, count the number of shares voted for and against such reduction, and declare whether the persons or bodies corporate holding the larger amount of the stock of such corporation have consented to such reduction or refused to consent thereto, and shall make out duplicate returns of said election, stating the number of shares of stock that voted for such reduction and the number that voted against such reduction, and subscribe and deliver the same to one of the chief officers of said company.

Sec. 4. Each ballot shall have endorsed thereon the number of shares thereby represented, but no share or shares transferred within sixty days shall entitle the holder or holders thereof to vote at such election or meeting, nor shall any proxy be received or entitle the holder to vote unless the same shall bear date and have been executed within three months next preceding such election or meeting, and it shall be the duty of such corporation to furnish the judges at said meeting with a statement of the amount of its capital stock with the names of persons or bodies corporate holding the same, and number of shares by each respectively held, which statement shall be signed by one of the chief officers of such corporation with an affidavit thereto annexed that the same is true and correct to the best of his knowledge and belief.

Sec. 5. That it shall be the duty of such corporation, if consent is given to such reduction, to file in the office of the secretary of the commonwealth, within thirty days after such election or meeting, one of the copies of the return of such election provided for by the third section of this act with a copy of the resolution and notice calling the same thereto annexed, and upon the reduction of the capital stock of such corporation made pursuant thereto, it shall be the duty of the president or treasurer of such corporation, within thirty days thereafter, to make a return to the secretary of the commonwealth, under oath, of the amount of such reduction, and in case of neglect or omission so to do, such corporation shall be subject to a penalty of five thousand dollars, which penalty shall be collected on an account settled by the auditor general and state treasurer as accounts for taxes due the commonwealth are settled and collected, and the secretary of the commonwealth shall cause said return to be recorded in a book kept for that purpose and furnish a certified copy of the same to the auditor general.

### **An Act relating to and regulating the Issue and Transfer of Certificates of Stock by Companies incorporated under the Laws of this Commonwealth (June 24, 1895, P. L. 258).**

Sec. 1. That any stockholder of any company incorporated under the laws of this commonwealth shall be entitled to receive a certificate of the number of shares standing to his, her, or their credit on the books of the corporation, which certificate shall be signed by the president, or vice president, or other officer designated by the board of directors, countersigned by the treasurer and sealed with the common seal of the corporation, which certificate or evidence of stock ownership shall be transferable on such books at the pleasure of the holder, in person or by attorney, duly authorized as the by-laws may prescribe, subject however to all payments due or to become due thereon; and the assignee or party to whom the same shall have been so transferred shall be a member of said corporation and have and enjoy all the immunities, privileges, and franchises and be subject to all of the liabilities, conditions, and penalties incident thereto, in the same manner as the original subscriber or holder would have been. And upon a sale of such stock in satisfaction of any debt for which it is pledged the purchaser shall have the right to compel a transfer of such stock upon the corporation books and the delivery of a proper certificate therefor.

### **An Act to provide for Increasing the Capital Stock and Indebtedness of Corporations (February 9, 1901, P. L. 3).**

Sec. 1. That the capital stock or indebtedness, or both, of any corporation created by general or special law may, with the consent of the persons or bodies corporate holding the larger amount in value of its stock, be increased to such an amount in the aggregate of each, without regard to the amount of the other, and regardless of any limitation upon the amount of either, prescribed in any general or special law regulating any such corporation, as it shall deem necessary to accomplish and carry on and enlarge the business and purposes of such corporation. Such increase of either may be made at once or from time to time, as the majority in interest of the stockholders shall determine, as aforesaid; and upon the authorizing of any such increase of indebtedness by the stockholders of such corporation, in the manner hereinafter provided, it shall be lawful for such corporation to secure the payment of the principal or interest, or both, of all or any part of such indebtedness, by mortgage, deed of trust, or other pledge or conveyance, by way of security, of all or any part of its real and personal property, rights, privileges, and franchises, and in such manner and upon such terms as its board of directors may determine.

Sec. 2. That any corporation desirous of increasing its capital stock or indebtedness, or both, as authorized by this act, shall by resolution of its board of directors, adopted by a majority of the entire number thereof, declare such purpose, and thereupon by resolution, similarly adopted, direct that the question of such proposed increase shall be submitted to the stockholders of such corporation for their consent; either: A. At any prescribed regular annual meeting or adjournment thereof, the notice whereof, stating inter alia that such subject would be considered thereat, shall have

been published once a week for sixty days prior to such meeting in at least one newspaper published in the county, city, or borough wherein the chief office or place of business of the corporation is situate. At said meeting the question shall be submitted to the stockholders, and it shall be the duty of the president and secretary of said meeting, by such agencies or methods as to them may seem meet, to ascertain whether the persons and bodies corporate holding the larger amount in value of the stock of said corporation shall have consented to such increase, and upon being so satisfied to certify in duplicate the fact, under oath duly administered: Provided, that should a stock vote be duly demanded at said meeting, it shall be the duty of the president and secretary, in ascertainment of the fact of the consent, to cause such vote to be taken at the same time and place, by the same persons and in the same manner, as the vote for directors or managers of such corporation shall be taken; or, B. At a special meeting of the stockholders, notice of the time, place, and object of which shall have been published once a week for sixty days prior to said meeting in at least one newspaper published in the county, city, or borough wherein such office or place of business is situated. At such meeting thus called, or any adjournment, thereof, an election of the stockholders shall be taken for or against such increase, which shall be conducted by three judges, stockholders of such corporation, appointed by the board of directors to hold said election, and if one or more of said judges be absent the judge or judges present shall appoint a judge or judges who shall act in the place of the judge or judges absent; and said judges shall respectively take and subscribe an oath or affirmation before an officer authorized by law to administer the same, well and truly and according to law to conduct such election to the best of their ability; and the said judges shall decide upon the qualifications of voters, and when the election is closed count the number of shares voted for and against such increase, and declare whether the persons and bodies corporate holding the larger amount of the stock of such corporation have consented to such an increase or refused to consent thereto, and shall make out duplicate returns of said election, stating the number of shares of stock that voted for such increase and the number that voted against such increase, and subscribe and deliver the same to one of the chief officers of said company. Each ballot shall have indorsed thereon the number of shares thereby represented, but no share or shares transferred within sixty days shall entitle the holder or holders thereof, to vote at such election or meeting; nor shall any proxy be received, or entitle the holder to vote, unless the same shall bear date and have been executed within four months next preceding such election or meeting; and it shall be the duty of such corporation to furnish the judges, at said meeting, with a statement of the amount of its capital stock, with the names of persons or bodies corporate holding the same, and number of shares by each respectively held, which statement shall be signed by one of the chief officers of such corporation, with an affidavit thereto annexed that the same is true and correct to the best of his knowledge and belief.

Sec. 3. That it shall be the duty of such corporation, if consent is given to such increase, to file in the office of the secretary of the commonwealth, within thirty days after such election, one of the copies of the certificates of the president and secretary of the annual meeting, or one of the copies of the return of such election at the special meeting hereinbefore provided for, with a copy of the resolution and notice calling the same thereto annexed; and thereafter the increase may be made at such time or times as shall be determined by the directors. Upon the actual increase of the capital stock or indebtedness of such corporation, made pursuant thereto, it shall be the duty of the president or treasurer of such corporation, within thirty days thereafter, to make a return to the secretary of the commonwealth, under oath, of the amount of such increase actually made, and concurrently therewith such corporation shall pay to the state treasurer, for the use of the commonwealth, such bonus on the actual increase shown by said return as shall then be prescribed by law. In case of neglect or omission to make said return, such corporation shall be subject to a penalty of five thousand dollars, in addition to the bonus, which penalty shall be collected on an account settled by the auditor general and state treasurer as accounts for taxes due the commonwealth are settled and collected; and the secretary of the commonwealth shall cause said return to be recorded in a book for that purpose and furnish a copy of the same to the auditor general.

Sec. 4. Nothing in this act contained shall be construed as compelling resort to the process herein provided in the case of indebtedness contracted in the usual



course of corporation business. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed: Provided, however, that any proceeding for increase of capital stock or indebtedness, begun under existing law prior to and not completed at the date this act becomes effective, shall be consummated under the authority of this act if the antecedent proceeding shall have conformed to its requirements; but if such antecedent proceeding shall not have so conformed, then the proceeding shall be consummated under the provisions of the law existing prior to the passage of this act: Provided, however, that the provisions of this act shall not inure to the benefit of any railroad, canal, or other transportation corporation, unless such railroad, canal, or other transportation corporation shall, before claiming or using the benefits of this act, file in the office of the secretary of the commonwealth an acceptance of all the provisions of article seventeen of the constitution of this commonwealth, which acceptance shall be made by resolution adopted at a regular or called meeting of the directors, trustees, or other proper officers of such railroad, canal, or other transportation corporation, certified under the seal of the corporation, and a copy of which resolution, certified under the seal of the office of the secretary of the commonwealth, shall be evidence for all purposes.

**An Act authorizing Corporations, organized for Profit, to purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, the Shares of Capital Stock of, or any Bonds, Securities, or Evidences of Indebtedness created by any other Corporation (July 2, 1901, P. L. 603).**

Sec. 1. That hereafter any corporation, organized for profit, created by general or special laws, may purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, the shares of the capital stock of, or any bonds, securities, or evidences of indebtedness created by, any other corporation or corporations of this or any other state, and while the owner of said stock may exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.

**An Act authorizing Corporations organized under the Laws of Pennsylvania to increase or diminish the Par Value of the Shares of their Capital Stock (July 2, 1901, P. L. 606).**

Sec. 1. That it shall be lawful for any corporation, organized under the laws of this state, to change the par value or face value of the shares into which its capital stock is divided. Such change shall be authorized by a vote of a majority of the stockholders of any such company, present in person or by proxy at any annual meeting, or any special meeting duly called for that purpose. Such change of the par value of the capital stock shall not be taken to increase or diminish, or change in any way, the total aggregate par value of the capital stock which said company may be authorized to issue or may have issued, but only to change the number of shares into which the same may be divided.

Sec. 2. In case the stockholders, so present at such meeting, shall vote to increase or diminish the par value of the shares of the capital stock of the company, as above provided, it shall be the duty of the proper officers of the company to file a certificate of the fact in the office of the secretary of the commonwealth, under the seal of the corporation; and thereupon the proper officers of such corporation shall issue to the stockholders the proper number of shares of the capital stock of the new par value, in exchange for outstanding shares of the former par value, upon the surrender of such outstanding shares by the respective holders and the cancellation thereof.

**An Act concerning the Sale of Railroads, Canals, Turnpikes, Bridges, and Plank Roads (April 8, 1861, P. L. 259).**

Sec. 1. That whenever the material, rolling stock, property, and franchises of any gas, water, coal, iron, steel, lumber, oil, or mining, or manufacturing, transportation, or telegraph company, or any railroad, canal, turnpike, bridge, or plank road,

or of any corporation created by or under any law of this state, shall be sold and conveyed, under and by virtue of any process or decree of any court of this state, or of the circuit court of the United States, or under or by virtue of a power of sale contained in any mortgage or deed of trust, without any process or decree of a court in the premises, the person or persons for, or on whose account such material, rolling stock, property, and franchises, of any gas, water, coal, iron, steel, lumber, oil or mining, or manufacturing, transportation, or telegraph company, or any railroad, canal, turnpike, bridge, or plank road, or of any corporation, created by or under any law of this state, may be purchased, shall be and they are hereby constituted a body politic and corporate, and shall be vested with all the right, title, interest, property, possession, claim, and demand in law and equity, of, in, and to such material, rolling stock, property, or franchises of any gas, water, coal, iron, steel, lumber, oil or mining, or manufacturing, transportation, or telegraph company, or any railroad, canal, turnpike, bridge, or plank road, or of any corporation created by, or under any law of this state, with the appurtenances, and with all the rights, powers, immunities, privileges, and franchises of the corporation, as whose the same may have been so sold, and which may have been granted to or conferred thereupon by any act or acts of assembly whatsoever, in force at the time of such sale and conveyance, and subject to all the restrictions imposed upon such corporation by any such act or acts, except so far as the same are modified hereby; and the person for, or on whose account any such material, rolling stock, property, and franchises of any gas, water, iron, steel, lumber, oil or mining, or manufacturing, transportation or telegraph company, or any railroad, canal, turnpike, bridge, or plank road, or of any corporation created by, or under any law of this state, may have been purchased, shall meet, within thirty days after the conveyance thereof shall be delivered, public notice of the time and place of such meeting having been given, at least once a week for two weeks, in at least one newspaper published in the city or county in which such sale may have been held, and organize said new corporation by electing a president and board of six directors (to continue in office until the first Monday of May succeeding such meeting, when and annually thereafter on the said day a like election for a president and six directors shall be held to serve for one year), and shall adopt a corporate name and common seal, determine the amount of the capital stock thereof, not exceeding the amount authorized in the original charter, and shall have power and authority to make and issue certificates thereof to the purchaser or purchasers aforesaid, to the amount of their respective interests therein, in shares of fifty dollars each, and may then or at any time thereafter create and issue preferred stock to such an amount and on such terms as they may deem necessary, and from time to time to issue bonds, at a rate of interest not exceeding six per centum, to any amount not exceeding their capital stock, and to secure the same by one or more mortgages upon the real and personal property and corporate rights and franchises, or either, or any part, or parts thereof: Provided, that no coal, iron, steel, lumber, or oil, or mining, manufacturing, transportation, or telegraph company shall have the benefit of this act unless it shall have previously filed, with the secretary of state, its acceptance of all the provisions of the constitution, as provided by law.

Sec. 2. That it shall be the duty of such new corporation, within one calendar month after its organization, to make a certificate thereof, under its common seal, attested by the signature of its president, specifying the date of such organization, the name so adopted, the amount of capital stock, and the names of its president and directors, and transmit the said certificate to the secretary of state, at Harrisburg, to be filed in his office and there remain of record, and a certified copy of such certificate, so filed, shall be evidence of the corporate existence of said new corporation.

Sec. 3. The provisions of this act shall not inure to the benefit of any corporation unless such corporation shall, before claiming or using the benefits of this act, file in the office of the secretary of the commonwealth, an acceptance of the provisions of article sixteen of the constitution of this commonwealth, which acceptance shall be made by resolution adopted at a regular or called meeting of the directors, trustees, or other proper officers of such corporation, certified under the seal of the corporation; and a copy of which resolution, certified under the seal of the office of the secretary of the commonwealth, shall be evidence for all purposes.

**Supplementary to an Act, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved the twenty-ninth day of April, one thousand eight hundred and seventy-four; providing for the Merger and Consolidation of certain Corporations (May 29, 1901, P. L. 349).**

Sec. 1. That it shall be lawful for any corporation now or hereafter organized under, or accepting the provisions of, the act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April twenty-ninth, one thousand eight hundred and seventy-four, or of any of the supplements thereto, or of any other act of assembly authorizing the formation of corporations, to buy and own the capital stock of, and to merge its corporate rights, powers, and privileges with, and into those of, any other corporation, so that by virtue of this act such corporations may consolidate, and so that all the property, rights, franchises, and privileges then by law vested in either of such corporations, so merged, shall be transferred to, and vested in the corporation into which such merger shall be made: Provided, that nothing in this act shall be construed so as to permit railroad, canal, telegraph companies, which own, operate or in any way control parallel or competing roads, canals, or lines, to merge or combine: And provided further, that any corporation formed for the purpose of carrying on any manufacturing business under the seventeenth or eighteenth clause of section two of an act entitled "An act to provide for the incorporation and regulation of certain corporations," approved April twenty-ninth, one thousand eight hundred and seventy-four, with the powers conferred by section thirty-eight or section thirty-nine of said act, may be merged and consolidated under the provisions of this act, with any other corporation formed for any purpose provided for in either the seventeenth or eighteenth clause of section two of the act above cited; but nothing in this act contained shall extend or enlarge beyond its former territorial limits the exclusive franchise of any gas or water company.

Sec. 2. Said merger or consolidation shall be made under the conditions, provisions and restrictions, and with the powers herein set forth, to wit: I. The directors of each corporation may enter into a joint agreement, under the corporate seal of each corporation, for the merger and consolidation of said corporations; prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers and their places of residence, the number of shares of the capital stock, the amount or par value of each share, and the manner of converting the capital stock of each of said corporations into the stock of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect the said consolidation and merger; but said agreement shall not be effective unless the same shall be approved by the stockholders of said corporations, in the manner hereinafter provided. II. Said agreement shall be submitted to the stockholders of each of said corporations, at separate special meetings, of the time, place, and object of which respective meetings due notice shall be given by publication, once a week for two successive weeks before said respective meetings, in at least one newspaper in the county or each of the counties in which the principal offices of said respective corporations shall be situate; and at said meetings the said agreement of the directors shall be considered, and a vote of a stockholders in person or by proxy shall be taken, by ballot, for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote; and if a majority in amount of the entire capital stock of each of said corporations shall vote in favor of said agreement, merger, and consolidation then that fact shall be certified by the secretary of each corporation, under the seal thereof, and said certificates, together with the said agreement or a copy thereof, shall be filed in the office of the secretary of the commonwealth, whereupon the said agreement shall be deemed and taken to be the act of consolidation of said corporations.

Sec. 3. Upon the filing of said certificates and agreement, or copy of agreement, in the office of the secretary of the commonwealth, the said merger shall be deemed to have taken place, and the said corporations to be one corporation under the name adopted in and by said agreement, possessing all the rights, privileges, and franchises

theretofore vested in each of them, and all the estate and property, real and personal, and rights of action of each of said corporations, shall be deemed and taken to be transferred to and vested in the said new corporation without any further act or deed: Provided, that all rights of creditors and all liens upon the property of each of said corporations shall continue unimpaired, and the respective constituent corporations may be deemed to be in existence to preserve the same; and all debts, duties and liabilities of each of said constituent corporations shall thenceforth attach to the said new corporation, and may be enforced against it to the same extent and by the same process as if said debts, duties and liabilities had been contracted by it. But such merger and consolidation shall not be complete, and no such consolidated corporation shall do any business of any kind, until it shall have first obtained from the governor of the commonwealth new letters patent, and shall have paid to the state treasurer a bonus of one-third of one per centum upon all its capital stock in excess of the amount of capital stock of the several corporations so consolidating, upon which the bonus required by law has been theretofore paid.

Sec. 4. A certified copy of said certificate and agreement, or copy of agreement, so to be filed in the office of the secretary of the commonwealth, shall be evidence of the lawful holding and action of such meetings, and of the merger and consolidation of said corporations.

Sec. 5. If any stockholder or stockholders of any corporation which shall become a party to an agreement of merger and consolidation hereunder, shall be dissatisfied with, or object to such consolidation, and shall have voted against the same at the stockholders' meeting, it shall and may be lawful for any such stockholder or stockholders, within thirty days after the adoption of said agreement of merger and consolidation by the stockholders as herein provided, and upon reasonable notice to said corporation, to apply by petition to any court of common pleas of the county in which the chief office of such corporation may be situate, or to a judge of said court in vacation, if no such court sits during said period, to appoint three disinterested persons to estimate and appraise the damages, if any, done to such stockholder or stockholders by said consolidation. Upon such petition, it shall be the duty of said court, or judge, to make such appointment; and the award of the persons so appointed, or of a majority of them, when confirmed by the said court, shall be final and conclusive; and the persons so appointed shall also appraise the share or shares of said stockholders in the said corporation, at the full market value thereof, without regard to any appreciation or depreciation in consequence of the said consolidation, which appraisement, when confirmed by the said court, shall be final and conclusive; and the said corporation may, at its election, either pay to the said stockholder or stockholders the amount of damages so found and awarded, if any, or the value of the stock so ascertained; and upon the payment of the value of the stock as aforesaid, the said stockholder or stockholders shall transfer the stock so held by them to the said corporation, to be disposed of by the directors thereof or to be retained for the benefit of the other stockholders; and in case the value of said stock, as aforesaid, shall not be so paid within thirty days after the said award shall have been confirmed by said court, the damages so found and confirmed shall be a judgment against said corporation, and may be collected as other judgments in said court are by law recoverable.

### An Act to regulate Proxies (March 28, 1820, 7 Sm. L. 320).

Sec. 1. That from and after the passing of this act all power to vote by proxy in any association incorporated by any authority in this commonwealth, or by the former proprietary government, shall be obtained and dated within six months previously to the time of holding the election or meeting of stockholders at which such proxy shall be presented, and shall not be used for any purpose or purposes except those therein expressed, nor shall any such proxy be given in blank, nor substitution thereof to a third person be admitted, any law or usage to the contrary notwithstanding: And provided, also, that nothing herein contained shall be so construed as to alter or affect the provisions of the act entitled "An act regulating banks," so far as relates to the dates of proxies.

Sec. 2. In all elections of officers in any association or company (incorporated as aforesaid) hereafter to be held by virtue of any law of this commonwealth, whenever

any person shall offer to the judges of such election any vote or votes, as attorney, proxy, or agent for any other person, such person being required thereto by any judge of such election, or any stockholder in such association or company, shall, before his vote or votes shall be received, take and subscribe the following oath or affirmation: "I ——— do solemnly swear (or affirm) that I have no interest, directly or indirectly, in the share upon which I shall vote at this election, that those shares are, to the best of my knowledge and belief, truly and in good faith owned by the persons in whose names they now stand, and that in voting at this election I have not transferred any of the said shares, or caused them to be transferred in trust or otherwise, for the purpose of increasing the votes at this election, and that I shall not violate in any manner, directly or indirectly, any provision of the act of incorporation which limits the number of votes a stockholder may give in his own right:" and the judges of such election are authorized to administer the aforesaid oath (or affirmation), and the said oath and all authorities or powers of attorney to vote by proxy, or as agent, shall be filed and preserved in the office of such association or company, and if any person shall willfully and absolutely swear or affirm falsely in taking any oath or affirmation prescribed by this act, such person so offending shall, upon due conviction thereof, be subject to the pains and penalties which are by law prescribed for the punishment of willful and corrupt perjury.

**An Act concerning Proxies, authorizing Representation and Voting of Shares of Capital Stock of Corporations at Meetings and Elections thereof  
(March 5, 1903, P. L. 14).**

Sec. 1. That stockholders of all corporations of this commonwealth, wherever residing, who shall be entitled to vote at any corporate meeting or election thereof, shall have and be possessed of the right and power to vote thereat by proxy duly executed by the stockholder, either with or without notarial or other acknowledgment, but properly attested by the signature of a witness, and that one person may be constituted and act as proxy for any number of stockholders: Provided, however, that proxies dated more than two months prior to any such meeting or election shall not confer right to vote thereat.

**An Act relating to the Taking of Stock Votes upon Subjects presented to Stockholders of Corporations of this Commonwealth for their Action  
(March 24, 1903, P. L. 50).**

Sec. 1. That whenever a stock vote is duly demanded or required, on any subject submitted to the stockholders of any corporation of this commonwealth for their action at any annual or special meeting, such vote may be taken at and certified to such meeting, or any adjournment thereof; or, if the annual election for directors shall, under provisions of the charter or laws governing such corporation, be held at a time which shall be within thirty days after the annual or special meeting at which such subject shall be submitted to the stockholders, then the vote on such subject may be taken at the same time and place, by the same persons, and in the same manner as the vote for directors or managers of such corporation shall be taken; or, if under provisions of the charter or laws governing such corporations, the annual election for directors or managers thereof shall not be held at a time which shall be within thirty days after the meeting at which such subject shall be submitted to the stockholders, then the stock vote upon such subject may be taken at any time within thirty days after such meeting, by three judges to be appointed, and at a time and place to be designated by the stockholders at said meeting, and the result of the vote shall be certified by the judges, under oath or affirmation, and their certificates shall be filed with the secretary of such corporation.

**An Act providing for the Voting of Shares of Stock in Corporations in this Commonwealth, held by Executors, Administrators, Guardians, and Trustees, and the Manner of Voting the same (March 16, 1905, P. L. 42).**

Sec. 1. That from and after the passage of this act, executors, administrators, guardians, and trustees, whether created by last will and testament or by decree of the proper court, shall have the same right and power, either in person or by proxy, at all corporate meetings, to vote any and all shares of stock, by them held in such fiduciary capacity, in any corporation in this commonwealth or organized under the laws of the same, as the deceased, or legal owner thereof had in his lifetime or during his legal ownership thereof. And where such stock is certified, or stands on the books of such corporation in the name of, or has passed by operation of law or by virtue of any last will and testament to, more than two such executors, administrators, guardians, or trustees, and dispute shall arise among them, the said shares of stock shall be voted by a majority of such executors, administrators, guardians and trustees, and in such manner and for such purposes as such majority shall authorize, direct, or desire the same to be voted.

**An Act regulating the Change of Corporate Titles (April 22, 1903, P. L. 251).**

Sec. 1. That it shall be lawful for any corporation of this commonwealth heretofore or hereafter created by any general or special law, to change its corporate title by resolution of its board of directors, adopted by a two-thirds vote thereof, approved at any annual meeting, or special meeting duly called, of the stockholders by a two-thirds vote thereof. Upon such approval by the stockholders, it shall be the duty of the president of said corporation to file in the office of the secretary of the commonwealth a certificate, under the seal of the company, setting forth the resolution adopted by the board of directors and approved by the stockholders, the date of the adoption of such resolution by the board of directors and the date of its approval by the stockholders, the date of the original incorporation of the company, the act of assembly under which the said corporation was created, the name under which the said corporation was originally incorporated and all subsequent changes therein, and the name which the corporation desires to adopt. The secretary of the commonwealth shall examine the records in his office, and, if he find that the name desired by said corporation does not conflict with the name of any corporation appearing upon said records he shall require the said certificate to be recorded, and shall issue to the said corporation a certificate, under his hand and the seal of his office, granting to said corporation the use of said new corporate title. The secretary of the commonwealth shall, upon the issuing of any such certificate, require the same to be recorded in a book kept for that purpose, and certify the said change in the corporate title to the auditor general of this commonwealth: Provided, that any corporation, required to record the original certificate of incorporation in the office for the recording of deeds, shall, before being entitled to use the new corporate title, record in the office for the recording of deeds, where the original certificate of incorporation was recorded, the said certificate granted by the secretary of the commonwealth authorizing the use of the new corporate title: Provided, also, that this act shall not apply to corporations not for profit.

**An Act to facilitate the Recovery of Debts due by Incorporated Companies (April 14, 1828, P. L. 439).**

Sec. 1. That whenever a judgment may be rendered in any court of record against any private corporation within this commonwealth in any civil action, and a writ of fieri facias shall be issued on such judgment, and the sheriff to whom the same may be directed shall make a return of nulla bona on the same, it shall and may be lawful for the plaintiff in such action to apply by petition and affidavit to the court in which such judgment has been rendered, stating that no property of the defendants can be found on which an execution may be levied and that the party making the application verily believes that the effects of the corporation are concealed

for the purpose of avoiding the payment of their debts, whereupon the said court may issue a citation, directed to the president, secretary, treasurer, or other officers and members of the said corporation, commanding him or them to appear in court on a day certain and answer such interrogatories as may be put to them touching the effects of the corporation, which citation shall be served by the sheriff; and it shall be the duty of the plaintiff to file interrogatories to be put to such officer or member at least fifteen days before the return day of such citation in the office of the prothonotary of such court, and the person or persons to whom the said citation shall be directed, shall on or before the return day thereof, file his or their answers to such interrogatories, upon oath or affirmation in the office of the prothonotary; and if any person to whom such citation may be directed shall neglect or refuse to file his answers as aforesaid, or shall file answers which in the opinion of the court shall be unsatisfactory, it shall be lawful for the court to issue an attachment for contempt against the person so refusing to answer or answering unsatisfactorily; and if upon the answers to such interrogatories it shall appear that any effects of the said corporation are in the possession or power of any member of the corporation, or of any other person or persons, it shall and may be lawful for the court to issue an order in the nature of an order of sequestration, which being served by the sheriff on the person or persons in whose possession or power such effects are alleged to be, shall have the same force and effect as if he or they had been summoned as garnishees in a foreign attachment, and the like proceedings shall thereafter be had against him or them, as may be had against such garnishees, after judgment rendered against the defendant in a foreign attachment; and any debtor of the said corporation may plead such sequestration and proceedings against him, in bar of any action brought by such corporation, exactly as the garnishee in a foreign attachment may plead the proceedings in the same, in bar of an action by the defendant in the same.

### **An Act relating to the Commencement of Actions (June 13, 1836, P. L. 568).**

Sec. 41. Every corporation, aggregate or sole, shall be amenable to answer upon a writ of summons as aforesaid, and in the case of a corporation aggregate, except counties and townships, service thereof shall be deemed sufficient, if made upon the president or other principal officer, or on the cashier, treasurer, secretary, or chief clerk of such corporation, in the manner hereinbefore provided.

Sec. 42. In actions for damages, occasioned by a trespass or injury done by a corporation, if the officers aforesaid of such corporation or any of them shall not reside in the county in which such trespass or injury shall be committed, it shall be lawful to serve the summons upon any officer or agent of the corporation, at any office or place of business of the corporation within the county, or if there be no such office or place of business, it shall be lawful to serve the summons upon the president or other principal officer, cashier, treasurer, secretary, or chief clerk, in any county or place where they may be found.

### **An Act relating to Executions (June 16, 1836, P. L. 755).**

Sec. 72. All executions which shall be issued from any court of record, against any corporation, not being a county, township, or other public corporate body, shall command the sheriff, or other officer, to levy the sum recovered together with the costs of suit, of the goods and chattels, lands and tenements of such corporation, and such execution shall be executed in the manner following, to wit: I. The officer charged with the execution of such writ, shall go to the banking-houses, or other principal office of such corporation, during the usual office hours, and demand of the president or other chief officer, cashier, treasurer, secretary, chief, clerk or other officer, having charge of such office, the amount of such execution, with legal costs. II. If no person can be found, on whom demand can be made, as aforesaid, or if the amount of such execution be not forthwith paid in lawful money, after demand as aforesaid, such officer shall seize personal property of said corporation, sufficient to satisfy the debt, interest and costs, as aforesaid. III. If the corporation against which such execution shall be issued be a banking company, and other sufficient personal property cannot be found, such officer shall take so much of any current

coin, of gold, silver, or copper, which he may find, as shall be sufficient to satisfy the debt, interest, and costs, as aforesaid. IV. If no sufficient personal property be found, as aforesaid, such officer shall levy such execution upon the real estate of such corporation, and thereupon proceed in the manner provided in other cases, for the sale of land upon execution.

Sec. 74. The court shall, upon the awarding of any such writ, appoint a sequestrator to execute the same, and to take charge of the property and funds taken or received by virtue of such writ, and to distribute the net proceeds thereof among all the creditors of such corporation, according to the rules established in the case of the insolvency of individuals; and such sequestrator shall have all the powers, and be subject to all the duties of trustees, appointed under the law relating to insolvent debtors: Provided that in the case of any work in the maintenance or repair of which the public may be interested, and which may from time to time require a portion of the revenue thereof, as aforesaid, to be expended thereon, the court which awards such writ, shall make such allowances for such purpose, and otherwise take such order thereon, as the public good shall require.

**A Supplement to the Act, entitled "An Act relating to executions," approved the sixteenth day of June, Anno Domini one thousand eight hundred and thirty-six (April 7, 1870, P. L. 58).**

Sec. 1. That in addition to the provisions of the sixty-second<sup>1)</sup> section of the act of the sixteenth day of June, Anno Domini one thousand eight hundred and thirty-six, relating to executions, and in lieu of the provisions or proceeds by sequestration under said act, plaintiff or assigns, in any judgment against any corporation not excepted by said act, may have execution (by) fieri facias issued from the court wherein said judgment is entered, which shall command the sheriff or other officer to levy the sum of said judgment, with interest and costs of suit, of any personal, mixed, or real property, franchises, and rights of such corporation, and thereupon proceed and sell the same, excepting lands held in fee, which latter shall be proceeded against and sold in the manner provided in cases for the sale of real estate; the proceedings on judgment under the aforesaid provisions of this supplement shall be without stay of execution: Provided, that the purchaser or purchasers of any or all of said property, real, personal, or mixed, together with the franchises and rights, shall take the same clear of all encumbrances, excepting any mortgage or mortgages which may legally exist at the time of levy thereupon, the lien of which shall not be affected in any manner by said sale.

Sec. 2. That by virtue of any execution issued under this act, the levy may extend to the property, franchises, and rights of said corporation, in any and every county of this commonwealth wherein the same may be, and shall be endorsed on said writ; the levy and sale thereof shall be as effective as though all said property, franchises, and rights were located, used, levied upon, and sold in the county wherein said writ of execution was issued, and shall fully divest the defendants of all interest therein.

**An Act concerning Bail and Attachments (March 20, 1845, P. L. 189).**

Sec. 4. So much of the act of assembly passed 16th day of June 1836, entitled "An act relating to executions", as provides for the levy and recovery of stock, deposits, and debts due to defendants by process of attachment and scire facias, is hereby extended to all cases of attachments to be issued upon judgments against corporations (other than municipal corporations); and from and after the passage of this act all such process, which hereafter may be issued, may be proceeded in to final judgment and execution, in the same manner and under the same rules and regulations, as are directed against corporations, by the provisions of the act of 16th June, 1836, relating to executions; and that so much of the 36th section of the act of 16th June 1836, as requires service of the attachment on any defendant, be and the same is hereby repealed, except where the defendant is a resident of the county in which the attachment issued.

<sup>1)</sup> Seventy-second.



## **An Act relative to Suits brought by or against Corporations (March 22, 1817, 6 Sm. L. 438).**

Sec. 1. That suits may be brought against corporations by their corporate names, before any court or magistrate of competent jurisdiction, by summons, which may be served on the president or other principal officer, or on the cashier, treasurer, secretary, or chief clerk of such corporation: Provided, that no suit shall be sustained on any bank note or notes payable to bearer or order on demand, unless demand shall have been first made for payment thereof at their banking house, office, or treasury, and in case of non-payment, interest shall be recoverable on the same from the time of making such demand.

Sec. 2. If any corporation, summoned as aforesaid, shall not appear by their officer, agent, or attorney, at the time mentioned in said summons, then or at any time afterwards, on proof of the service of the summons, by the oath or affirmation of the officer serving the same, judgment, by default, shall be rendered against said corporation, for the sum which to the court or magistrate shall appear to be due.

Sec. 4. That in case of appeal, certiorari or writ of error, by any corporation, the oath or affirmation required by law, shall be made by the president or other chief officer of the corporation, or in his absence, by the cashier, treasurer, or secretary and when any corporation shall be sued, and shall appeal, or take a writ of error, the bail requisite in that case shall be taken absolute for the payment of the debt, interest, and costs on affirmance of the judgment.

Sec. 5. That (rules of reference) and all notices whatsoever, may, where a corporation is a party in any suit, be served on the president or other principal officer, or cashier, or secretary, or chief clerk of such corporation.

Sec. 6. That in cases in which a corporation shall be a party in any suit in any court, or before any magistrate, all the proceedings, except as regulated by this act, shall be the same as directed by law in other similar cases.

## **An Act relating to Executions (March 29, 1819, 7 Sm. L. 217).**

Sec. 2. The stock of any body corporate owned by any individual or individuals body or bodies politic or corporate, in his, her, its, or their own name or names, shall be liable to be taken in execution and sold, in the same manner that goods and chattels are liable in law to be so taken and sold, subject, nevertheless, to any debt due by the holder or holders of such stock to the company or body corporate.

Sec. 3. And whereas, it sometimes happens, that the stock of such bodies corporate is held in another name or names than that or those of the real owner or owners thereof, and it is just that stock so held should be made liable for the debts of the real owner or owners: Therefore, whenever any plaintiff or creditor shall file an affidavit with the prothonotary of the court, alderman, or magistrate, in which or before whom such plaintiff or creditor has instituted or is about to institute a suit, stating that he verily believes such stock to be really and bona fide the property of the debtor against whom such suit has been or is about to be brought, and also shall enter into a recognisance, with two sufficient sureties, conditioned for the payment of such damages as such court, alderman, or magistrate may adjudge, to the party or parties to whom such stock shall really belong, in case such stock should not be the property of such debtor, it shall and may be lawful for such court, alderman, or magistrate to cause to be issued process in the nature of a foreign attachment against such stock, and to summon as garnishee the person or persons in whose name or names the same shall be held, and proceed against the said stock and such garnishee, in all respects in the same manner, as by the laws of this commonwealth proceedings now are or hereafter may be prescribed in cases of foreign attachments against personal estate; and upon judgment being had in favor of the plaintiff in any such suit, execution may issue immediately for the sale of such stock, in the same manner that goods and chattels are sold on writs of fieri facias: Provided, that in case of a judgment before a justice of the peace or alderman, where the amount in controversy shall exceed five dollars and thirty-three cents, an appeal shall be allowed to the court of common pleas, agreeably to the same rules and regulations now or hereafter to be prescribed for granting appeals in other cases cognisable before a justice of the peace.

### **An Act relating to Executions (June 16, 1836, P. L. 755).**

Sec. 22. The stock owned by any defendant in any body corporate, also deposits of money in any bank, or with any person or body corporate or politic, belonging to him, and debts due to him, shall be liable to execution, like other goods or chattels, subject, nevertheless, to all lawful claims thereupon, of such body corporate or person.

Sec. 32. The proceedings to levy an execution upon stock, debts, and deposits of money belonging or due to the defendant, shall be as follows, to wit: In the case of stock, if it shall be held in another name than that of the real owner thereof, the plaintiff shall file in the office of the prothonotary of the court, an affidavit, stating that he verily believes such stock to be really the property of the defendant, and shall enter into recognisance, with two sufficient sureties, conditioned for the payment of such damages as the court may adjudge, to the party to whom such stock shall really belong, in case such stock should not be the property of the defendant.

Sec. 33. Upon the filing of such an affidavit and recognisance, it shall be lawful for the prothonotary to issue process in the nature of an attachment, against such stock, with a clause of summons to the person in whose name the same may be held, in the nature of a writ of scire facias against garnishees in a foreign attachment; and thereupon, the plaintiff may proceed to judgment, execution, and sale of the said stock, in the manner allowed in cases of foreign attachment against personal estate.

Sec. 34. The like proceedings may be had against stock owned by a defendant, and held in his own name, without the affidavit and recognisance aforesaid; and if any person shall claim to be the owner of such stock, he may, upon filing an affidavit that the stock is really his property, and entering into a recognisance, with two sufficient sureties, conditioned for the payment of such damages as the court may adjudge to the plaintiff, if such stock should really belong to the defendant, the court shall admit him to become a party upon the record, and take defense in like manner as if he were made garnishee in the writ.

### **An Act relating to Legal Proceedings by or against Corporations (June 19, 1871, P. L. 1360).**

Sec. 1. That in all proceedings in courts of law or equity of this commonwealth, in which it is alleged that the private rights or individuals or the rights or franchises of other corporations are injured or invaded by any corporation claiming to have a right or franchise to do the act from which such injury results, it shall be the duty of the court in which such proceedings are had to examine, inquire, and ascertain whether such corporation does in fact, possess the right or franchise to do the act from which alleged injury to private rights or to the rights and franchises of other corporations results, and if such rights or franchises have not been conferred upon such corporation, such courts, if exercising equitable power, shall, by injunction, at suit of the private parties or other corporations, restrain such injurious acts; and if the proceedings be at law for damages, it shall be lawful therein to recover damages for such injury, as in other cases.

### **An Act to require Corporations to give Bail in certain Cases, and relative to the Commencement of Suits against Foreign Corporations, etc. (March 15, 1847, P. L. 361).**

Whereas, doubts have arisen in regard to the effect of the first section of the act entitled "An act concerning bail and attachments," passed 20th March, 1845, and as to the bail required to be given by corporations in cases of appeal and writs of error since the passage of the said act; therefore,

Sec. 1. Be it enacted, etc., that from and after the passage of this act, when any corporation (municipal corporations excepted), being sued, shall appeal or take a writ of error, the bail requisite in that case shall be taken absolute, for the payment of debt, interest, and costs on the affirmance of the judgment.

Sec. 2. In all cases where any company has been incorporated by this commonwealth, and the principal office for the transaction of business thereof shall be lo-

cated out of this state, and where none of the officers upon whom process can be served, under the existing laws of the commonwealth, reside in the state, it shall be lawful to sue said company, in any county in this state where the said company, at any time, transacted the business thereof, or where the works or real estate of such company were located; and such legal process may be served on such company, by publication of a copy of the process in such newspaper as the court may direct, for six weeks previous to the return day; and for every purpose of legal proceeding, such company shall be taken, both in law and equity, to be located in this state, and shall be liable to writs of quo warranto, mandamus, attachment, and execution, and service of such process, by publication as aforesaid, shall be, to all intents and purposes, as effective as if served upon the president of such company or other officer of the same, and he or they resident of the proper county of this state, and as if the company's office were within the state; and any property, of any description, of such company, within the state, shall be liable to attachment and execution; and any such property, which would be liable to attachment or execution, if the said office were located in this state, shall be taken to be in this state for such purpose, and shall be liable to levy and sale, in the same manner as if the officers of said company resided in the county of this state, in which the same is liable to be sued by the provisions of this act.

---

### **An Act for the Protection of Mechanics and Laborers (April 22, 1854, P. L. 480).**

Sec. 1. That in all assignments of property, whether real or personal, which shall hereafter be made by any person or persons, or chartered company, to trustees or assignees, on account of inability at the time of the assignment to pay his or their debts, the wages of miners, mechanics, and laborers employed by such person or persons, or chartered company, shall be first preferred and paid by such trustees or assignees, before any other creditor or creditors of the assignor: Provided, that any one claim thus preferred shall not exceed one hundred dollars.

---

### **An Act relating to Corporations (May, 3, 1855, P. L. 423).**

Sec. 1. That every charter of incorporation granted or to be granted shall be deemed and taken to be subject to the power of the legislature, unless expressly waived therein, to alter, revoke, or annul the same, whenever in their opinion it may be injurious to the citizens of the commonwealth; in such manner, however, that no injustice shall be done to the corporators, and as fully as if the reservation of said power had been therein expressed.

---

### **An Act relating to the Organization and Meetings of certain Corporations incorporated under the Laws of this Commonwealth (November 27, 1865, P. L. 1866—Page 1228).**

Sec. 1. That in all cases where any company has been incorporated under the laws of this state, and a majority of the directors, corporators, or stockholders thereof are citizens of any other state, said corporation may be organized and all the meetings of such corporators, directors, or stockholders held in such place, whether in this state or elsewhere, as such majority may from time to time appoint: Provided, however, that the annual election for officers of such corporation shall be held in the state of Pennsylvania, at such time and place, and upon such notice by publication in the newspapers of this state, as the by-laws of such corporation may from time to time determine.

---

**An Act to authorize Incorporated Companies to invest and re-invest Surplus Funds in Mortgages, Stocks, and other Securities, and fixing the Time for holding Elections for Directors (March 31, 1868, P. L. 50).**

Sec. 1. That it shall and may be lawful for any and all companies incorporated or organized under the laws of this Commonwealth, including those authorized thereby to transport merchandise or other property, and also for the directors, managers, or trustees thereof, with the approval of the stockholders, to invest the surplus or other funds or earnings of such companies in mortgages on improved real estate, in ground-rents, in the loans of the United States, in the purchase from holders thereof (of) any of the shares of the capital stock of the respective company, and also in the public debt of the state of Pennsylvania or of the city of Philadelphia, or in other good stocks or securities, and to sell and transfer the same, and to reinvest the proceeds of such sales in securities or stocks in like kind, and to prescribe, by resolution of the directors or the by-laws of the company or otherwise, the mode of making such investments, purchases, and sales with the approval of the stockholders, and the amount or amounts thereof to be purchased, and the price or prices to be paid or received therefor, and the reinvestment of the proceeds thereof, and to make such compensation as the said directors, managers, or trustees may deem proper to any director, manager, trustee, treasurer, or other agent or officer of such company, for the keeping, receiving, paying, investing, or reinvesting of any of the moneys belonging to the said company, or for any other services performed by him or them as agents of the company or otherwise; and that any such companies may change and fix the time of holding their annual election for directors to such a day as they may select, a certificate of such change, duly authenticated by the proper officers of the company, shall be filed with the auditor general of this commonwealth within thirty days after such change shall have been made.

**An Act requiring a Majority of the Directors or Managers of Corporations to constitute a Quorum (April 15, 1869, P. L. 29).**

Sec. 1. That whenever the number of directors or managers of any corporation may be increased under authority of law, a majority of the whole number shall be necessary to constitute a quorum; and all laws inconsistent with this act be and the same are hereby repealed.

**An Act to enable Courts of Common Pleas of this Commonwealth to change the Name, Style, and Title of Corporations (April 20, 1869, P. L. 82).**

Sec. 1. That it shall be lawful for the several courts of common pleas of this commonwealth to change the name, style, and title of any corporation within their respective counties, with the same proceedings and in the same manner as they are now authorized to improve, amend, or alter charters: Provided, that no proceeding for such purpose shall be entertained by the courts until notice of such application is given to the auditor general, and proof of such fact is produced to the courts; and upon final decree in such proceeding, before using such name, the parties in interest shall file with the auditor general a copy of the decree making such change.

This section does not apply to corporations organized under the Act, April 29, 1874.

**An Act to authorize and direct the Attorney General, upon Complaint made by Parties whose Interests are thereby affected, to institute Proceedings, according to Law, against Corporations alleged to have violated Duties imposed upon them by Law (April 1, 1870, P. L. 45).**

Sec. 1. That in all cases in which heretofore any privileges or immunities have been granted to any corporation by any act of the general assembly of the commonwealth, upon terms and conditions in such act prescribed, for the knowing and in-

tentional neglect or refusal to perform and comply with which terms and conditions a forfeiture or determination of such privileges and immunities is provided for in the act, it shall be the duty of the attorney general of the commonwealth, upon complaint made to him by any party whose rights or interests are affected by such neglect or refusal, to institute forthwith proceedings, in a court of competent jurisdiction, to ascertain the fact of such neglect or refusal; and if such neglect or refusal shall be adjudged by such court to have occurred, then and in such case all the rights, privileges, powers, and immunities granted to said corporation upon such terms and conditions shall forthwith cease and determine; and thereupon the governor of the commonwealth shall provide such organization as may be needful to manage any such property, until otherwise directed by the legislature: Provided, however, that all expenses incident to the management thereof shall be paid from its own proceeds; and nothing in this act contained shall be deemed as authorizing any liability against or expenditure by the commonwealth of Pennsylvania: Provided, that when proceedings under the provisions of this act are commenced in any court other than a supreme court, the right of appeal to the supreme court shall exist to either party, as in other cases: Provided further, this act shall not apply to bridge companies.

### **An Act to authorize married Women owning Loans of this Commonwealth or of the City of Philadelphia, or Capital Stock of any Corporation of this Commonwealth, to sell and transfer the Same (April 1, 1874, P. L. 49).**

Sec. 1. That it shall and may be lawful for any married woman owning any of the loans of this commonwealth or of the city of Philadelphia, or any of the loans, or share or shares, of the capital stock of any corporation, created by or under the laws of this commonwealth, to sell and transfer the same with the like effect as if she were unmarried.

### **An Act relative to Service of Process upon the Stockholders of Corporations in Actions brought to charge the Stockholders for Debts of the Corporation, or for unpaid Instalments upon their Stock (May 14, 1874, P. L. 146).**

Sec. 1. That in all actions or proceedings now or hereafter brought or instituted in any county within this commonwealth, to charge the stockholders of any corporation, with any of the debts of such corporation or to enforce payment of instalments due upon stock, service of summons or other process, may be made upon the stockholders resident within such county in the same manner as writs of summons are now directed to be served, and upon those residing in other counties of this commonwealth by the sheriff of the county in which they may respectively reside, and upon those non-residents of this commonwealth by publication for four successive publications in a newspaper published within the county where such action or proceeding is brought or instituted, and also in the state in which such non-residents may reside, as the court from which such action or proceedings shall issue may direct, and a copy of such publication shall be mailed to the post office address of such non-resident stockholders, if such address can be ascertained.

### **An Act to authorize Corporations to Increase the Security of their bonded Indebtedness (May 15, 1874, P. L. 186).**

Sec. 1. That it shall and may be lawful for any corporation existing by or under the authority of any law of this commonwealth which shall have mortgaged any part of its estate, corporate property, and franchises for the security of all or any portion of its bonded indebtedness, to mortgage its remaining estate, corporate property, and franchises, or any part of the same, as a further and additional, security for the same bonded indebtedness: Provided, however, that no lien then existing upon such remaining estate, property, and franchises shall be thereby impaired or affected.

## **An Act to authorize the Issuing of Letters Patent to certain Corporations (May 15, 1874, P. L. 186).**

Sec. 1. That upon the application of the president and secretary of any corporation heretofore or hereafter created under any general or special law of this commonwealth, accompanied by due proof that said corporation has complied with all the conditions provided by law and the constitution to enable it to have a corporate existence and transact business, it shall be lawful for the governor to issue letters patent under the great seal of the commonwealth, in such form as he may prescribe, to such corporation, declaring it to be and erecting it into a body corporate or politic in deed and in law.

## **An Act authorizing Executors or Trustees to unite with others in the Organization of Corporations (April 22, 1889, P. L. 42).**

Sec. 1. That corporations for profit may be organized by executors or trustees acting under a will authorizing or directing them to carry on or continue a business of the testator with any other purpose than that of winding up the same, in the usual manner, whenever the business is such that a charter could have been obtained by the testator, to conduct the same, under the then existing laws of this commonwealth. And the executors or trustees may unite with others in the organization of such corporations, and contribute the property, the legal title to which is vested in them, as capital to the corporations on terms to be agreed upon by the associates, and accept stock in the corporations in lieu thereof.

First. The whole of the proceeds of the trust estate, whether contributed or sold, and whether paid for by shares or money, shall be held on the same uses and for the same trusts and persons, and subject to the same powers, as the estate and property was held for or under before the organization.

Second. All persons having a beneficial interest, vested or contingent, who are in being at the time of such organization and are of full age, shall consent in writing to the organization. All persons who are in being and interested, immediately or contingently, if under age or non compos mentis, shall, by a guardian or committee to be appointed for that purpose, consent. The husbands of all married women interested, if not living separate and apart, shall consent.

Third. The orphans' court of the county shall, upon petition, inquire into the circumstances and give their sanction to the terms and conditions of the organization. In appointing guardians or committees to inquire and consent under this act, no security shall be demanded, nor shall such guardians or committees be entitled to receive any property of the beneficiary, other than the compensation for his services ordered by the court.

## **An Act to authorize Corporations to borrow Money to redeem previous Loans authorized by special Laws, and limiting the Rate of Interest and Terms thereof, and providing for the Payment of Mechanics' Liens (May 13, 1879, P. L. 57).**

Sec. 1. That any corporation which has heretofore been authorized by any special law to borrow money, is hereby authorized and empowered to borrow, for a period not exceeding thirty years, any sum of money, not exceeding in the aggregate the amount of the principal of such previous loan which shall at that time remain outstanding and the amount of any mechanics' liens unpaid, at a rate of interest not exceeding that allowed by law at the time, and may issue their bonds therefor, upon such terms and conditions, and secured by mortgage or otherwise, as they may deem expedient; but such new loan shall be applied exclusively to the payment of the previous loan and such mechanics' liens, and for no other purpose whatever, and all laws inconsistent herewith are hereby repealed.

## **An Act relating to the Sale, Letting, or Mortgaging of Real Estate by Corporations (June 8, 1881, P. L. 69).**

Sec. 1. That whenever any corporation may have sold, or mortgaged, or may hereafter sell, let, or mortgage, any of its corporate property, real or personal, or its franchises, a copy of the minutes of any meeting of the stockholders or directors of such corporation, authorizing or directing any such sale, letting, or mortgaging, proven by oath or affirmation of the secretary, or other proper custodian of such minutes to be a full and true copy of the minutes of such meeting, so far as relates to any such sale, letting, or mortgaging, shall be prima facie evidence of the matters therein set forth in any case in which the original minutes, if duly proven, would be evidence in any judicial proceeding, relating to such property or franchises; and such copy, so probated before any officer authorized to take probate or acknowledgment of deeds for the purpose of record in this commonwealth, may be recorded in the office for recording deeds, in the proper county, in like manner and with like effect, as other instruments of writing, relating to real estate in such county, may be recorded.

Sec. 2. Whenever any such corporation after having sold, let, or mortgaged any estate, real or personal, or franchises, may have been, or may hereafter be, dissolved in pursuance of law, such probate may be made by the secretary who kept or recorded such minutes or by any other ex-officer of such dissolved corporation having the actual custody of said original minutes, and the averment of such facts in the probate shall be prima facie evidence thereof.

Sec. 3. In case of any duly authorized sale, letting, or mortgaging by a corporation, the same shall not be invalidated by any informality in the execution or acknowledgment of any conveyance, mortgage, or other instrument by any officer of such corporation for carrying the same into effect: Provided, that no defect in substance shall be deemed to be cured hereby.

## **An Act permitting the Stockholders of Corporations to determine the Number of Directors, and the Time for holding annual Elections of Officers (May 31, 1887, P. L. 281).**

Sec. 1. That it shall be lawful, from and after the passage of this act, for any corporation, chartered or existing by or under any law of this state, to determine, by the vote of its stockholders holding a majority in interest of all of its stock, at a meeting duly called for the purpose, the time of holding the annual meeting for the election of officers of the corporation, and the number of directors that shall thereafter govern its affairs: Provided, that the number of directors so determined shall not be less than three nor more than fifteen, and that at least one-third of the directors of every corporation shall be and remain, during their term of service, residents of the state of Pennsylvania: And provided further, that this act shall not apply to any company heretofore incorporated, unless such company shall file, in the office of the secretary of the commonwealth, a certificate of the acceptance of this act, and also of the provisions of the constitution of this commonwealth, which acceptance shall be made by resolution adopted at a regular or called meeting of the directors, trustees or other proper officer of such corporation, certified under the seal of the corporation, and a copy of which resolution, certified under the seal of the office of the secretary of the commonwealth, shall be evidence for all purposes.

## **An Act to protect the Rights of Shareholders in Property and Stocks of Corporations (June 2, 1887, P. L. 302).**

Sec. 1. That no real or personal property, the title to which is or may be held by or in the name of any corporation of this state, authorized by its charter or general law to hold the same, shall be escheated to the commonwealth, nor shall, in any judicial proceeding, any inference of any relation of trust or agency arise, by reason of the character or residence of the shareholders holding the whole or part of the capital stock of such corporation, nor because the beneficial ownership of said property,

in whole or in part, is or has been in any person or persons, corporation or corporations prohibited from holding the same.

Sec. 2. That said lands and property shall again become liable to escheat to this commonwealth, as already provided by law, if said corporation shall continue to hold said lands and property exceeding five years after the passage of this act, and an information in the nature of a quo warranto or other proper proceeding shall be filed or brought by this commonwealth to escheat the same: Provided, that no railroad, canal, or other transportation company of this state, nor any corporation, in whose name the title to other lands or property is held, shall plead or have the benefit of this act, unless it shall have previously filed with the secretary of the commonwealth a certificate in writing, signed by the president and secretary, and attested by the corporate seal of the company, stating that, at a regular or special meeting of said board of directors, a resolution, in pursuance to the consent of the stockholders, was adopted, accepting all the provisions of the seventeenth article of the constitution of the state, and that all the powers of and privileges and the limitations and restrictions mentioned therein shall be deemed and taken for all purposes to apply to said corporation. No such certificate shall be made by the officers, aforesaid, without the consent of the stockholders of the corporation, at a general or special meeting, first had and obtained: Provided further, that no railroad, canal or other transportation company, shall plead or have the benefit of this act, unless it shall have previously filed, with the secretary of state, its acceptance of all the provisions of article seventeen of the constitution of this state, in manner and form as provided by law.

### **An Act authorizing salaried Officers of private or business Corporations to concurrently serve as Directors therein (May 20, 1891, P. L. 101).**

Sec. 1. That it shall be lawful for any vice-president, treasurer, or other salaried officer of any trust, deposit, or other purely private or business corporation, to hereafter serve, or to have heretofore concurrently served such corporation as a director thereof, when lawfully elected to said position.

### **An Act to regulate the Change of Location of the principal Office, the Place of annual and other Meetings of Stockholders, and the Time of such annual Meetings of Corporations of this Commonwealth (June 8, 1893, P. L. 355).**

Sec. 1. That it shall be lawful for any corporation of this state, now existing or hereafter created, to change the location of its principal office, the place of its annual and other meetings of stockholders, or the time for holding such annual meetings, or either, or all, by resolution of its board of directors, adopted by a two-thirds vote thereof, approved at any annual meeting or special meeting duly called of the stockholders, by a two-thirds vote thereof. Upon such approval of the stockholders, it shall be the duty of the president of such corporation to file in both the offices of the secretary of the commonwealth and the auditor general of this commonwealth a report, under the seal of the company, specifying the change or changes so made. Nothing in this act, however, shall authorize the location of the principal office or the holding of the annual or other meetings of stockholders outside of the limits of this commonwealth.

### **An Act to regulate the Number of Directors in Corporations chartered under the Laws of this Commonwealth (April 19, 1901, P. L. 80).**

Sec. 1. That in all corporations heretofore or hereafter incorporated under the laws of this commonwealth, and in all foreign corporations heretofore or hereafter domesticated under the laws of this commonwealth, the board of directors may consist of any number of persons not less than three. The number of directors may be increased or diminished, from time to time, by the stockholders of any such corporations, at any regular annual meeting or at any special meeting called for that



purpose, of which notice shall be given as required by the by-laws; and it shall be lawful for any such corporation, by its by-laws, to authorize the board of directors to increase or decrease the number of the directors from time to time without a vote of the stockholders.

**An Act authorizing Corporations, organized for Profit, to purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, the Shares of Capital Stock of, or any Bonds, Securities, or Evidences of Indebtedness created by, any other Corporation (July 2, 1901, P. L. 603).**

Sec. 1. That hereafter any corporation, organized for profit, created by general or special laws, may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of, the shares of the capital stock of, or any bonds, securities, or evidences of indebtedness created by, any other corporation or corporations of this or any other state, and while the owner of said stock may exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.

**An Act relating to the Service of certain Process in Actions at Law, and the Effects thereof, and providing who shall be made Parties to certain Writs (July 9, 1901, P. L. 614).**

Sec. 1. Second. The writ of summons, the writ of attachment in execution, and the writ of scire facias in personal actions, may be served by the sheriff upon a corporation, a partnership limited, or a joint stock company, in the county wherein it is issued, in any of the following methods: a) By handing a true and attested copy thereof to the president, secretary, treasurer, cashier, chief clerk, or other executive officer, personally; or, b) By handing a true and attested copy thereof to an adult member of the family of any one of said officers, at his dwelling house; or, c) By handing a true and attested copy thereof at his place of residence, to an adult member of the family of the person with whom any of said officers resides; or, d) By handing a true and attested copy thereof, at his place of residence, to the manager or clerk of the hotel, inn, apartment-house, boarding-house, or other place or lodging where any of said officers reside; or, e) By handing an attested copy thereof, at any of its offices, depots, or places of business, to its agents or persons for the time being in charge thereof, if upon inquiry thereat the residence of one of said officers within the county is not ascertained, or if from any cause an attempt to serve at the residence given has failed; or, f) If the corporation, partnership limited, or joint stock company has no office or place of business in actual operation, in the county where the cause of action arose, then service may be made in such county upon any member of its board of directors, if any of the methods set forth in clauses a), b), c), or d) hereof; or g) If the corporation, partnership limited, or joint stock company has no office or place of business in actual operation in the county in which the cause of action arose, and no member of its board of directors, or other officer, is a resident of the county in which the cause of action arose, then service may be made in any of the methods set forth in clauses a), b), c), d), e), or f) hereof, in any other county than that in which the writ issues, by the sheriff of such other county, who shall be deputized for that purpose by the sheriff of the county in which the writ issues; or, h) In the case of a registered foreign corporation, partnership limited, or joint stock company by serving its duly registered attorney as in case of a summons issued against him personally, or by leaving a true and attested copy thereof for him, at the registered place, if he be not found there during the usual business hours of any business day, with the person for the time being in charge of the business carried on at such place. Provided, that two returns of nihil habet shall be equivalent to personal service, in writs of scire facias to revive judgments entered in personal actions.

Third. The writ of summons, in cases where a trespass or nuisance has been committed on real estate, may also be served in the manner provided by sections one and two, in any other county than that in which the writ issues, by the sheriff of such other county, who shall be deputized for that purpose by the sheriff of the county in which the writ issues.

Fourth. The writ of summons, on any character of insurance policy or certificate, may also be served in the manner provided by section two, in any other county than that in which the writ issues, by the sheriff of such other county who shall be deputized for that purpose by the sheriff of the county in which the writ issues, if the insurance was effected in, or the insured person at the time of his death resided in, or the insured property at the time of loss was located in, the latter county: Provided, that in such event the court shall abate the writ if it shall be made to appear, at any time before verdict or judgment by default, that the insurance was not effected in, nor was the insured person residing at the time of his death in, nor was the insured property at the time of loss located in, the county in which the writ was issued.

Fifth. The writ of summons against a foreign corporation may also be served in the manner provided by section two, in any other county than that in which the writ issues, by the sheriff of such other county, who shall be deputized for that purpose by the sheriff of the county in which the writ issues, if the cause of action arose in the latter county: Provided, that in such event the court shall abate the writ if it shall be made to appear, at any time before verdict or judgment by default, that the cause of action did not arise in the county in which the writ was issued.

Sixth. The writ of *capias ad respondendum* may be served by the sheriff of the county in which it is issued, in any one of the following methods: a) By arresting the defendant, other than a minor or married woman, and holding him to bail or committing him to jail for want thereof; or, b) If the defendant be a minor or married woman, or if from any cause the defendant is liable to arrest but is not arrested, then, by serving the writ as in case of a summons; in which event the cause shall proceed with the same effect as if a summons in trespass had been duly served, and in that case, if the defendant was liable to arrest on the original writ but was not arrested, alias and pluries writs may issue at any time prior to final judgment in the cause, and the defendant may be arrested by virtue thereof, with the same effect as if arrested on the original writ.

Seventh. The writ of foreign attachment may be served in the manner now provided by law, but the attachment shall be effective whether or not the defendant was in the commonwealth at the time the writ was issued or served.

Eighth. The writ of attachment, under the act of seventeenth March, one thousand eight hundred and sixty-nine (Pamphlet Laws, 8), and its supplements, and the writ of attachment against vessels, may be served by the sheriff in the county in which it is issued; and the writ of domestic attachment may be served in any county in or to which it is issued, as in the case of a foreign attachment.

Ninth. The writ of *replevin* may be served by the sheriff in the county in which it is issued. a) By taking possession of the goods and chattels described therein, and by serving the defendant, if found, as in the case of a summons; and by adding to the record, and serving as in the case of a summons, any other than the defendant who may be found in possession of such goods and chattels, or any of them; or, b) If the goods and chattels cannot be found then by serving the writ as in the case of a summons; in which event the cause shall proceed with the same effect as if a summons in trespass had been duly served; and alias and pluries writs may issue in the same suit, at any time prior to verdict, and said goods and chattels may be taken by virtue thereof, with the same effect as if taken on the original writ.

Tenth. The plaintiff in any writ of *ejectment*, in any writ of summons to recover upon a ground-rent deed, or to recover any sum charged upon real property by will or deed, in any writ of *scire facias sur mortgage*, or in any writ to charge particular land with the payment of a particular debt running with the land, shall file with his praecipe an affidavit, setting forth, to the best of his knowledge, information, and belief, who are the real owners of the land charged, or in the action of *ejectment* are claimants thereof, as the case may be; and all such persons shall be made parties to the writ, which shall then be served by the sheriff as follows: a) By adding to the writ and serving, as in the case of a summons, all persons other than those named in the writ, who may be found in possession of said land or any part thereof; or, if no one be found in possession thereof, then by posting a true and attested copy of the writ on the most public part of said property; and, b) By serving, as in the case of a summons, such of those named in the writ as may be found in the county in which the writ issues; and, c) By serving, as in the case of a summons, such of those named in the writ as may be found in any other county of the commonwealth, by the sheriff thereof, who shall be deputized for that purpose by the sheriff of the county in which the writ

issues; and, d) By mailing a true and attested copy of the writ, in a registered letter, to such of those named in the writ as cannot be served within the commonwealth.

But if the plaintiff in his affidavit filed shall aver that he does not know, and has not been able to ascertain, the owners or claimants of the property, or their addresses, or the names or addresses of some of them, then service upon the persons in possession of the property, or posting in default thereof, and service as above set forth upon those who can be served, and two returns of nihil habet as to the rest of those named in the writ, shall constitute a full service of such writ.

Eleventh. The plaintiff in any writ of seire facias sur mechanics claim, or in any other writ to charge particular land with the payment of a statutory lien, other than those provided for in clause tenth, and excepting also claims for taxes and municipal claims, shall file with his praecipe an affidavit, by himself, his agent, or attorney, setting forth that he has caused inquiries to be made, in the neighborhood of the property, of at least three of those residing upon or nearest thereto, whose names and residences are given and the dates of the inquiries stated, and that he believes the persons named by him in such affidavit are the real owners of said property; whereupon all such persons shall be made parties to the writ, which shall be served by the sheriff, by adding to the writ and serving, as in the case of a summons, all persons other than those named in the writ who may be found in possession of said property, or any part thereof, or if no one be found in possession thereof, then by posting a true and attested copy of the writ on the most public part of said property and, a) By serving, as in the case of a summons, such of those named in the writ as may be found in the county in which the writ issues; and, b) By serving, as in the case of a summons, such of those named in the writ as may be found in any other county of the commonwealth, by the sheriff thereof, who shall be deputized for that purpose by the sheriff of the county in which the writ issues; and, c) If all those named in the writ cannot be served, as provided in clauses a) and b) hereof, then by mailing a true and attested copy of the writ, in a registered letter, to such of those named in the writ, whose residences are given as without the commonwealth, and by advertising a brief notice of the contents of said writ, once a week for four successive weeks, in one newspaper of general circulation in the county, and in the legal periodical, if any, designated by the court for that purpose: Provided, however, that if all those named in the writ have been personally served, or if return registry receipts for the copies mailed are returned by the sheriff with the writ, the advertisement above provided for may be dispensed with.

Twelfth. The writ of seire facias to revive a judgment, in any of the classes of cases mentioned in sections ten and eleven of this act, shall be served as is provided for the original seire facias therein, unless personal service was made upon the defendants in the original proceeding; in which event two returns of nihil habet to the writs to revive, shall be equivalent to personal service upon the defendants.

Thirteenth. Service of the writ of quo warranto and the writ of mandamus may be made upon the defendant wherever found, as in the case of a summons.

Fourteenth. The defendant named in, or added to any writ, may accept service thereof in person or by counsel, with the same effect as if personally served therewith by the sheriff. If all of those named in any writ cannot be served prior to the return day thereof, alias and pluries writs may issue in the same suit when required, and be served with the same effect as if full service was made of the original writ. The return of mortuus est shall not be made to any of the writs named in the tenth, eleventh, and twelfth sections of this act.

Fifteenth. When the sheriff is a party to any proceeding, service shall be made by the coroner of the particular county in the manner hereinbefore set forth. A writ mistakenly directed to the sheriff, in a proceeding to which he is a party, shall not abate by reason of such misdirection, but shall be served by the coroner, with the same effect as if directed to him.

Sixteenth. Writs issued by any magistrate, justice of the peace, or alderman shall be served in the county wherein they are issued, by the constable or other officer therein to whom given for service, in the same manner and with like effect as similar writs are served by the sheriff when directed to him by the proper court; and in cases within the jurisdiction of such magistrate, justice of the peace or alderman, a constable or other officer of any county of the commonwealth, authorized to serve writs therein, may be deputized to make the service, in whole or in part, in cases where the sheriff of another county might be deputized as hereinbefore set forth.

Seventeenth. All acts of assembly and parts of acts of this commonwealth, general, special, or local, in relation to the service of the writs hereinbefore set forth, inconsistent herewith, be and the same are hereby repealed; it being intended hereby to furnish a complete and exclusive system in itself, relative to the service of all such writs.

### **An Act to validate Acts done by Corporations before the Recording of their Charters (July 10, 1901, P. L. 651).**

Sec. 1. That where, heretofore, any act has been done, or transfer or conveyance of any property been made to or by any corporation, created or intended to be created by virtue of the provisions of the act of assembly approved April twenty-ninth, one thousand eight hundred and seventy-four, or its supplements, in good faith, after the issuing of letters patent and before the actual record of the certificate, such acts, transfers, and conveyances shall, after said certificate has been duly recorded as provided in the said act, be deemed and taken to be valid and effectual for all purposes: Provided, this act shall not affect any proceeding now pending.

### **Supplement to the Acts relating to Incorporations by the Courts of Common Pleas (April 9, 1856, P. L. 293).**

Sec. 1. That it shall be lawful for any court of common pleas of the proper county to hear the petition of any corporation under the seal thereof, by and with the consent of a majority of a meeting of the corporators, duly convened, praying for permission to surrender any power contained in its charter, or for the dissolution of such corporation; and if such court shall be satisfied that the prayer of such petition may be granted without prejudice to the public welfare, or the interests of the corporators, the court may enter a decree in accordance with the prayer of the petition, whereupon such power shall cease or such corporation be dissolved: Provided, that the surrender of any such power shall not in any wise remove any limitation or restriction in such charter; and that the accounts of the managers, directors, or trustees of any dissolved company shall be settled in such court, and be approved thereby; and dividends of the effects shall be made among any corporators entitled thereto, as in the case of the accounts of assignees and trustees: Provided further, that no property devoted to religious, literary, or charitable uses shall be diverted from the objects for which they were given or granted: Provided, that the decree of said court shall not go into effect until a certified copy thereof be filed and recorded in the office of the secretary of the commonwealth.

### **An Act supplemental to an Act, entitled "A Supplement to Acts relating to Incorporations by the Courts of Common Pleas," approved on the ninth day of April, Anno Domini one thousand eight hundred and fifty-six (April 4, 1872, P. L. 40).**

Sec. 1. That the "proper county" intended by said act, approved as aforesaid, may be, at the option of any corporation praying for permission to dissolve in the way and manner in said act designated, either the county in which the principal operations of the corporations are conducted or that county in which its principal office or place of business is located: Provided that notice of said application shall be given by publication in two papers in the county in which the principal operations are conducted and that in which the principal office is located.

### **An Act to enable the Officers of dissolved Corporations to convey Real Estate held by such Corporations (April 20, 1874, P. L. 110).**

Sec. 1. That whensoever it has occurred or shall happen that any corporation has been or shall be dissolved, whether by decree of court, expiration of time, or other-

wise, owning land or other real estate within this commonwealth, it shall and may be lawful for the court of common pleas of the county wherein the real estate is, or shall be located, upon the petition of any one or more of the shareholders or corporators or their legal representatives, and personal notice to, and service upon, all known parties in interest whose places of residence are known, and such further notice by advertisement to others interested as the court may direct, if no reasonable and sufficient cause be shown to the contrary, to authorize the sale of such real estate, in fee simple, at either public or private sale, upon such terms as the court may designate, by a trustee to be appointed for that purpose, which trustee, before making such sale, shall give security for the faithful application of the proceeds of such sale according to law, to be approved by the court, in double the probable value of the land to be sold, and the proceeds of such sale shall be distributed by the party making the same, as part of the effects of the defunct corporation, to creditors or shareholders, as the said court may adjudge them to be entitled, and if said corporation had made sale of real estate and had not conveyed the same, such court may decree conveyance in specific execution of such contract in manner aforesaid.

### An Act relating to Writs of Quo Warranto and Mandamus (June 14, 1836, P. L. 621).

Sec. 1. That writs of quo warranto may be issued by the supreme court, in the form and manner hereafter provided, in all cases in which the writ of quo warranto at common law, may have been issued, and in which the said court has heretofore possessed the power of granting informations in nature of such writ.

Sec. 2. Writs of quo warranto in the form and manner hereinafter provided, may also be issued by the several courts of common pleas, concurrently with the supreme court, in the following cases, to wit: . . . III. In case any question shall arise concerning the exercise of any office, in any corporation, created by authority of law, and having the chief place of business within the respective county. And in any such case, the writ aforesaid may be issued, upon the suggestion of the attorney general, or his deputy, in the respective county, or of any person or persons desiring to prosecute the same. IV. In case any association, or number of persons, shall act as a corporation, or shall exercise any of the franchises or privileges of a corporation, within the respective county, without lawful authority. V. In case any corporation as aforesaid shall forfeit by misuser, or non-user, its corporate rights, privileges, or franchises, or shall do, suffer or omit to do, any act, matter, or thing, whereby a forfeiture thereof shall by law be created, or shall exercise any power, privilege, or franchise not granted or appertaining to such corporation. And in any such case, the writ aforesaid may be issued upon the suggestion of the attorney general or his deputy, in the respective county, or of any person or persons desiring to prosecute the same.

Sec. 3. Whenever the attorney general shall have reason to believe that any association as aforesaid have acted as a corporation, or exercised any of the franchises or privileges thereof, without lawful authority, or that any corporation has forfeited its corporate rights, privileges, or franchises, as aforesaid, or exercised any power, privilege, or franchise, not granted or appertaining to such corporation, it shall be his duty to file, or cause to be filed, a suggestion as aforesaid, and to proceed thereon for the determination of the matter.

Sec. 4. Writs of quo warranto shall be in the following form, to wit: County, ss. The commonwealth of Pennsylvania: To the sheriff of said county, greeting: We command you that you summon \_\_\_\_\_, so that \_\_\_\_\_ be and appear before our court \_\_\_\_\_ to be holden at \_\_\_\_\_, in and for the \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next and then and there to show by what authority \_\_\_\_\_ claim to exercise the office of \_\_\_\_\_, in the \_\_\_\_\_ county of \_\_\_\_\_, or to show by what authority he or they exercise within the said county, (or county of,) the liberties and franchises following, to wit: (setting them forth \_\_\_\_\_, or otherwise, as the case may be,) and have you then there this writ; Witness, etc.

Sec. 5. The writ aforesaid, may be issued out of the supreme court, with the leave of the said court in term time, or of any judge of the said court in vacation, and out of the respective court of common pleas, with the leave of the said court in term time, or of the president judge thereof in vacation, and such writ may be made

returnable at any time within term, at the discretion of the court or judge granting the same.

Sec. 6. The writ aforesaid, shall be served at least ten days before the return day, in the same manner as a writ of summons in a personal action, and if the party against whom such writ shall be issued shall not appear, judgment by default may be taken, without further process, in the manner allowed in a personal action.

Sec. 7. Every suggestion as aforesaid, shall set forth the facts as fully as has heretofore been required, in informations aforesaid; it shall be verified by affidavit, and filed of record in the cause, and in every case, the name of the person at whose instance the writ shall issue, shall be indorsed thereon.

Sec. 8. If it shall appear to the court or judge as aforesaid, that the several rights of different persons may be properly determined by one writ, it shall be lawful for such court or such judge to make such order or orders, for the introduction or addition of such persons into the writ, or for notice to such persons to appear and take defense, as shall be reasonable and just.

Sec. 9. The defendant in such writ shall answer, plead, or demur to the suggestion filed, as aforesaid; he may traverse all or any of the material facts contained therein, as in other cases, and the person or persons at whose instance such writ shall have been issued, shall reply, take issue, or demur, and thereupon issue shall be joined in due course, as in other cases; and the court shall make such orders from time to time, in respect to such pleadings, as shall expedite the decision of the cause, consistently with reasonable convenience to the parties.

Sec. 10. Whenever any issue of fact shall be joined upon any writ of quo warranto as aforesaid, issued by the supreme court in any district, it shall be lawful for the said court, by an order to be made in the cause, to direct such issue to be tried in the court of common pleas of the county in which the matters complained of took place, or, upon cause shown, in any other county of such district; and thereupon, a copy of the proceedings in such cause shall be certified to the said court of common pleas, and such issue shall be determined in like manner as issues of fact in causes originating in such court, and when judgments shall be rendered upon such issue in the said court of common pleas, the same shall be certified to the supreme court, who shall proceed thereupon to the final adjudication of the cause.

Sec. 11. If the defendant in any quo warranto, as aforesaid, whether a natural person, or persons, or a corporation, be found or adjudged guilty of usurping or intruding into, or unlawfully holding or exercising the office, franchise, privilege, or power mentioned in such writ, the court shall give judgment that such defendant be ousted, and altogether excluded from such office, franchise, privilege, or power, and that the commonwealth, or party, suing the writ, as the case may be, recover costs from the defendant.

Sec. 12. If judgment be given for the defendant in any such writ, and the proceedings have been instituted on the relation of any private prosecutor, the court shall also give judgment, that the defendant recover his costs of such relator, to be levied by execution, as in cases of debt; if the proceedings have been instituted by the attorney general, at his own instance, it shall be lawful for the court, in their discretion, on giving judgment for the defendant, to order that the costs be paid by the county in which the matters complained of were alleged to have taken place.

Sec. 13. If judgment of ouster and exclusion, as aforesaid, be given against any defendant, execution thereof shall be had by a writ of injunction, which shall be awarded by the court against such defendant, whether a natural person or persons, or a corporation; such injunction shall recite the judgment of the court, and shall enjoin the defendant or defendants from exercising the office, franchise, privilege, or power mentioned therein, and obedience thereto may be compelled by attachment and sequestration, in like manner as in other cases of injunction.

Sec. 14. If such injunction shall have been issued upon a judgment rendered by default, as aforesaid, the defendant therein may, nevertheless, upon the payment of costs, and reasonable notice to the adverse party, and such other terms as the court shall deem equitable, plead to the suggestion as aforesaid and thereupon the parties shall proceed to issue and trial, in like manner as if the defendant had appeared at the return of the writ, and had pleaded in due course; and if judgment shall be rendered in favor of such defendant, the judgment by default shall be taken off, and the injunction aforesaid shall thenceforth be dissolved.

**Sec. 15.** If shall be lawful for any person aggrieved by the judgment of any court of common pleas, upon any writ of quo warranto as aforesaid, to remove the same by writ of error, into the supreme court for the proper district, but it shall be lawful for the court to which such writ of error shall be directed, to award execution as aforesaid, notwithstanding such writ of error, if, in the discretion of the court, the case shall appear to require it.

**Sec. 16.** Every such writ of error may be made returnable forthwith, if the supreme court shall be in session in the proper district, and shall be heard and decided by the judges thereof, at the term to which it is returnable.

**Sec. 17.** Provided, that nothing herein contained shall debar any prosecution for breach of an act of assembly in relation to corporations, corporate or other officers, or persons acting as corporations without lawful authority.

---

**A further Supplement to an Act, entitled "An Act relating to Orphans' Courts," passed the 29th day of March, 1832, and the Supplement thereto, passed the 14th day of April, 1835, and for other Purposes (April 13, 1840, P. L. 319).**

---

**Sec. 14.** When the persons claiming to be officers of any corporation shall be ousted by the judgment of any court, on a writ of quo warranto, it shall be lawful for said court to appoint not less than three nor more than nine trustees to take charge of said corporation, who shall be selected and chosen by the said court, out of such persons as are, by the charter of said corporation, competent to be elected officers thereof, and said trustees so appointed shall exercise and perform all the duties of officers of the said corporation, until others shall be elected in their stead, pursuant to the law regulating said corporation, or the order of court, where there is no sufficient law providing for the same.

---

**A Supplement to an Act further to regulate Proceedings in Courts of Justices, and for other Purposes (March 17, 1853, P. L. 208).**

---

**Sec. 2.** In all proceedings by quo warranto, whether at the suggestion of the attorney general or any person or persons desiring to prosecute the same, against any association or any number of persons, who shall act as a corporation, or shall exercise any of the franchises or privileges of a corporation without lawful authority, or against any corporation which shall forfeit by misuser or non-user its corporate rights, privileges, or franchises, or shall do, suffer, or omit to do any act, matter, or thing whereby a forfeiture thereof shall by law be created, whether the said forfeiture may be declared by the legislature or otherwise, or shall exercise any power, privilege, or franchise not granted or appertaining to such corporation, the suggestion may be filed and all proceedings had in the supreme court, wherever the same may be sitting; and any questions of fact on which an issue may be ordered shall be tried before a judge of the supreme court and by a jury summoned from any county in which the supreme court shall be sitting at the time of such trial; and proceedings commenced or prosecuted in any district shall be certified to any other district, as may be requisite for the speedy determination thereof.

---

**An Act for the Appointment of a Receiver in Cases where Corporations have been dissolved by Judgment of Ouster, upon Proceedings of Quo Warranto (April 4, 1872, P. L. 46).**

---

**Sec. 1.** That whenever any corporation incorporated under the laws of this commonwealth shall have been dissolved by judgment of ouster, upon proceedings of quo warranto in any court of competent jurisdiction, all the estate, both real and personal, of which such corporation in any way seized or possessed shall pass to and vest in the persons who at the time of such dissolution are the officers of such corporation, in trust, to hold the same for the benefit of the stockholders and creditors of the corporation.

**Sec. 2.** The supreme court, or any judge thereof sitting at nisi prius, shall, upon the petition of any stockholder or creditor of such corporation, appoint a receiver, who shall have all the powers of a receiver appointed by a court of chancery, to take possession of all the estate, both real and personal, thereof, and make distribution of the assets among the persons entitled to receive the same according to law: Provided, that written notice, as may be directed by the court, shall be given to the persons, or a majority of them, who were at the time of the dissolution officers of the corporation, of the intention, time, and place of presenting such petition: And provided further, that it shall be the duty of such receiver to give notice of his appointment, time, and place of meeting to all the stockholders of such corporation, and to advertise the same as the court may direct.

**Sec. 3.** That the provisions of this act shall also apply to any corporation that has been heretofore dissolved by judgment of ouster upon proceedings of quo warranto in any court of competent jurisdiction, the affairs of which have not been settled and adjusted.

### **An Act providing for the Appointment of a Receiver in Cases where Corporations have been dissolved by Judgment of Ouster, upon Proceedings of Quo Warranto (April 26, 1893, P. L. 26).**

**Sec. 1.** That whenever any corporation incorporated under the laws of this commonwealth shall be dissolved by judgment of ouster upon proceedings by quo warranto in any court of competent jurisdiction, the said court, or in vacation any one of the law judges thereof, shall have power to appoint a receiver, who shall have all the powers of a receiver appointed by a court of chancery, to take possession of all the estate, both real and personal thereof, and make distribution of the assets among the persons entitled to receive the same according to law. The powers of such receiver may continue as long as the court deems necessary for said purposes and he shall be held to supersede an assignee of the corporation in possession.

**Sec. 2.** The provisions of this act shall also apply to any corporation that has been heretofore dissolved by judgment of ouster upon proceedings of quo warranto in any court of competent jurisdiction, the affairs of which have not been settled and adjusted.

### **An Act relating to the Escheat of Lands held by Corporations, without the License of the Commonwealth (April 6, 1833, P. L. 167).**

**Sec. 1.** As often as information shall be given to the auditor general that any lands within this commonwealth have been alienated to, or purchased by any incorporated company, in its corporate capacity, or in the name of trustees or feoffees, for its use, without the license of the commonwealth, or have come into their possession by any manner or device whatever, the said auditor general shall proceed to appoint a deputy escheator, in the county where the lands are situated, who shall forthwith hold an inquest in the same manner and form as is prescribed by existing laws relative to escheats, and shall make report thereof, as directed by said laws, and the said deputy escheator and all other officers and persons concerned shall have like powers, be entitled to like fees, and be subject to the same restrictions and liabilities, as is provided in the case of the escheat of the lands of an individual, for the want of heirs or known kindred.

**Sec. 2.** So much of any provision of the act, entitled "An act to declare and regulate escheats," and its supplements, as provide for a reward to informers of an escheat, shall not apply to any proceedings under the provision of this act, so as to entitle any informer to such reward, but it shall be the duty of the escheator to procure the necessary evidence to substantiate the title of the commonwealth, and to prosecute the right of the commonwealth; who shall receive for his services the fees and compensation provided for by the several sections of said act and its supplements.

**Sec. 3.** The auditor general shall make return of the proceedings in every case where an inquisition shall be found and returned as aforesaid to the governor, to be filed in the office of the secretary of the commonwealth, all which matters and things shall be laid by the governor before the legislature.



## An Act to facilitate the Collection of Debts against Corporations (March 21, 1849).

Sec. 3. That in all suits or actions hereafter to be brought in any court of record of this commonwealth, against any foreign corporation or body corporate, not holding its charter under the laws of this commonwealth, every judgment, verdict, or award rendered against such corporation, shall be final and conclusive, unless the said defendants, in addition to the usual proceedings in cases of appeal, shall give good and sufficient bail in the nature of bail absolute, for the payment of such sum or sums as shall finally be adjudged to be due to the plaintiff or plaintiffs, together with interest and costs thereon; and in the commencement of any suit or action against any such foreign corporation, process may be served upon any officer, agent, or engineer of such corporation, either personally, or by copy, or by leaving a certified copy thereof at the office, depot, or usual place of business of said corporation; and such service shall be good and valid in law to all intents and purposes.

**An Act entitled an Act amending "An Act, entitled a further Supplement to 'An Act supplementary to an Act, entitled an Act to enable the Citizens of the United States, Corporations chartered under the Laws of this Commonwealth and authorized to hold Real Estate, to hold and convey Title which had been held by Aliens and Corporations not authorized by law to hold the same, approved June sixth, Anno Domini one thousand eight hundred and eighty-seven, providing for the confirmation of certain Titles to Real Estate', approved the ninth day of June, Anno Domini one thousand eight hundred and ninety-one; providing for the Confirmation of certain Titles to Real Estate, made since the ninth day of June, one thousand eight hundred and ninety-one."**  
(March 26, 1903, P. L. 67).

Sec. 1. That where any conveyances of real estate in this commonwealth have been made by any alien, or any foreign corporation or corporations of another or of this state, or by the officers of any such corporation after dissolution or expiration of charter, since the fifteenth day of June, Anno Domini one thousand eight hundred and ninety seven, to any citizen of the United States or to any corporation chartered under the laws of this commonwealth and authorized to hold real estate, before any inquisition shall have been taken against the real estate so held to escheat the same, such citizens or corporations, grantee as aforesaid, shall hold and may convey such title and estate indefeasibly, as to any rights of escheat in this commonwealth by reason of such real estate having been held by an alien or corporation not authorized to hold the same by the laws of this commonwealth.

**An Act to quiet the Title of Real Estate, and to enable Citizens of the United States, and Corporations chartered under the Laws of this Commonwealth, and authorized to hold Real Estate therein, to hold and convey Title to Real Estate, which has been formerly held by Corporations not authorized by Law to hold Real Estate in Pennsylvania (April 23, 1909, P. L. 123).**

Sec. 1. Where any conveyances of real estate, in this commonwealth, have been made by any foreign corporation or corporations not having the right to own and hold the same, to any citizen of the United States, or to any corporation chartered under the laws of this commonwealth and authorized to hold real estate, such citizen or corporation, grantee as aforesaid, shall hold and may convey such title and estate indefeasibly as to any right of escheat in this commonwealth, by reason of such real estate having been held by a corporation not authorized to hold the same by the laws of this commonwealth.

## **An Act authorizing the Merger and Consolidation of certain Corporations (May 3, 1909, P. L. 229).**

Sec. 1. That it shall be lawful for any corporation, now or hereafter organized under the provisions of any general or special act of assembly authorizing the formation of any corporation or corporations, to merge its corporate rights, franchises, powers, and privileges with and into those of any other corporation or corporations transacting the same or a similar line of business, so that by virtue of this act such corporations may consolidate, and so that all the property, rights, franchises, and privileges then by law vested in either of such corporations, so merged, shall be transferred to and vested in the corporation into which such merger shall be made: Provided, that nothing in this act shall be construed so as to permit railroad, canal, or telegraph companies, which own, operate, or in any way control, parallel or competing roads, canals, or lines, to merge or combine: Provided further, that nothing in this act contained shall extend or enlarge beyond its former territorial limits the exclusive franchise of any gas or water company; and that the merger or consolidation of water companies shall be subject to the provisions of the act, entitled "An act to require all water and water-power companies hereafter incorporated, or hereafter formed by merger and consolidation, or hereafter purchasing property and franchises of any other such company, to designate the exact source of their supply of water or water-power; and to require all existing water and water-power companies, merging and consolidating or purchasing the property and franchises of any other such company, to accept the provisions of this act, and of the act approved April thirteenth, one thousand nine hundred and five, entitled "An act providing that the right of eminent domain, as represents the appropriation of streams, rivers, or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law," and providing the manner in which water and water-power companies, subject to the provisions of this act, may secure a new or additional source of supply for their water or water-power," approved the seventh day of June, Anno Domini one thousand nine hundred and seven.

Sec. 2. Said merger or consolidation shall be made under the conditions, provisions, and restrictions, and with the powers, herein set forth; to wit:

First. The directors of each corporation shall enter into a joint agreement, under the corporate seal of each corporation, for the merger and consolidation of said corporations; prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers, and their places of residence, the number of shares of the capital stock, the amount or par value of each share, and the manner of converting the capital stock of each of said corporations into the stock of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect the said consideration and merger; but said agreement shall not be effective unless the same shall be approved by the stockholders of said corporations, in the manner hereinafter provided.

Second. Said agreement shall be submitted to the stockholders of each of said corporations, at separate special meetings or at any annual meetings, of the time, place, and object of which respective meetings due notice shall be given by publication, once a week for two consecutive weeks before said respective meetings, in at least one newspaper in the county or in each of the counties in which the principal office of said respective corporations shall be situate, — excepting in the case of the merger or consolidation of corporations which, upon their original incorporation, are required by the constitution to publish notice of intention to incorporate for a longer period than two weeks, in which case notice by publication shall be as required by the constitution, — and at said meetings the said agreement of the directors shall be considered, and a vote of the stockholders in person or by proxy shall be taken, by ballot, for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote; and if a majority in amount of the entire capital stock of each of said corporations shall vote in favor of said agreement, merger, and consolidation, then that fact shall be certified by the secretary of each corporation, under the corporate seal thereof, and said certificates, together with the said agreement or a copy thereof, shall be filed in the office of the secretary of the commonwealth, who shall

forthwith present the same to the governor for his approval, and when approved by the governor the said agreement shall be deemed and taken to be the act of consolidation of said corporation.

Sec. 3. Upon the filing of said certificates and agreement, or copy of the agreement, in the office of the secretary of the commonwealth, and upon the issuing of new letters patent thereon by the governor, the said merger shall be deemed to have taken place, and the said corporations to be one corporation under the name adopted in and by said agreement, possessing all the rights, privileges, and franchises theretofore vested in each of them, and all the estate and property, real and personal, and rights of action of each of said corporations, shall be deemed and taken to be transferred to and vested in the said new corporation without any further act or deed: Provided, that all rights of creditors and all liens upon the property of each of said corporations shall continue unimpaired, and the respective constituent corporations may be deemed to be in existence to preserve the same; and all debts, duties, and liabilities of each of said constituent corporations shall thenceforth attach to the said new corporation, and may be enforced against it to the same extent and by the same process as if said debts, duties, and liabilities had been contracted by it. But such merger and consolidation shall not be complete, and no such consolidated corporation shall do any business of any kind, until it shall have first obtained from the governor of the commonwealth new letters patent, and shall have paid to the state treasurer a bonus as prescribed by law upon all its capital stock in excess of the amount of capital stock of the several corporations so consolidating, upon which the bonus required by law has been theretofore paid: And provided further, that new letters patent of such consolidated corporation shall not be issued by the governor of the commonwealth, until each and every corporation entering into and forming the consolidated corporation shall have filed with the secretary of the commonwealth a certificate from the auditor general of the commonwealth, setting forth that all reports required by the auditor general of the commonwealth have been duly filed to the date of the proposed merger, and that all taxes due the commonwealth of Pennsylvania have been paid, up to and including said date.

Sec. 4. A certified copy of said certificate and agreement, or copy of agreement, so to be filed in the office of the secretary of the commonwealth, shall be evidence of the lawful holding and action of such meetings and of the merger and consolidation of said corporations.

Sec. 5. If any stockholder or stockholders of any corporation, which shall become a party to an agreement of merger and consolidation hereunder, shall be dissatisfied with or object to such consolidation, and shall have voted against the same at the stockholders meeting, it shall and may be lawful for any such stockholder or stockholders, within thirty days after the adoption of said agreement of merger and consolidation by the stockholders, as herein provided, and upon reasonable notice to said corporation, to apply by petition to any court of common pleas of the county in which the chief office of such corporation may be situate, or to a judge of said court in vacation, if no such court sits during said period, to appoint three disinterested persons to estimate and appraise the damages, if any, done to such stockholder or stockholders by said consolidation. Upon such petition, it shall be the duty of said court or judge to make such appointment; and the award of the persons so appointed, or of a majority of them, when confirmed by the said court, shall be final and conclusive; and the persons so appointed shall also appraise the share or shares of said stockholders, in the said corporation, at the full market value thereof, without regard to any appreciation or depreciation in consequence of the said consolidation; which appraisal, when confirmed by the said court, shall be final and conclusive; and the said corporation may, at its election, either pay to the said stockholder or stockholders the amount of damages so found and awarded, if any, or the value of the stock so ascertained; and upon the payment of the value of the stock, as aforesaid, the said stockholder or stockholders shall transfer the stock so held by them to the said corporation, to be disposed of by the directors thereof or to be retained for the benefit of the other stockholders; and in case the value of said stock, as aforesaid, shall not be so paid within thirty days after the said award shall have been confirmed by said court the damages so found and confirmed shall be a judgment against said corporation, and may be collected as other judgments in said court are by law recoverable.

**An Act to validate the Exercise of Franchise of Manufacturing Corporations and Land Companies whose Charters have expired, and to validate the Conveyances and other Instruments of said Corporations (April 22, 1909, P. L. 76).**

Sec. 1. No exercise of franchise, grant, bargain and sale, feoffment, deed of conveyance, release, assignment, or other assurance of lands, tenements, and hereditaments, contract, or agreement whatsoever, made, executed, and delivered prior to January first, nineteen hundred and nine, by any corporation of this commonwealth, or by the successors of any such manufacturing corporation or land company, shall be deemed, held, or adjudged invalid, and defective or insufficient in law, by reason of the expiration of the term of its charter; but all and every such exercise of franchises, grant, bargain and sale, feoffment, deed of conveyance, release, assignment, or other assurance, contract, or agreement, so made, executed, and delivered shall be as good, valid, and effectual in law and fact as if the charter of such corporation, or of the successors of such corporation, had not expired or had been renewed and extended: Provided, however, that such corporation, or the successors thereof, has accepted the provisions of the constitution of this commonwealth, and of the act of assembly entitled "An act to provide for the incorporation and regulation of certain corporations," approved of the twenty-ninth day of April, Anno Domini one thousand eight hundred and seventy-four: And provided further, that not more than twenty years has elapsed since the expiration of the term of such charter.

**An Act relating to County Prisons . . . and relative to the Service of Process on Foreign Insurance Companies and other Corporations (April 8, 1851, P. L. 334).**

Sec. 6. In any case when any insurance company or other corporation shall have an agency or transact any business in any county of this commonwealth, it shall and may be lawful to institute and commence an action against such insurance company or other corporation in such county, and the original writ may be served upon the president, cashier, agent, chief, or any other clerk, or upon any directors or agent of such company or corporation within such county, and such service shall be good and valid in law, to all intents and purposes.

**An Act relating to Corporations and to Estates held for Corporate, religious and charitable Uses (April 26, 1855, P. L. 328).**

Sec. 5. No corporation other than such as shall have been incorporated under the laws of this state, nor shall any foreign government, potentate, or power, hereafter acquire and hold any real estate within this commonwealth directly, in the corporate name, or by or through any trustee or other device whatsoever, unless specially authorized to hold such property by the laws of this commonwealth: Provided, that the residence without the limits of this state of a portion of the members of any religious, literary, charitable, or beneficial society, or association otherwise qualified to hold real or personal estate within this state, shall not incapacitate such society or association from taking and holding such property, not exceeding the value limited by law.

Sec. 9. All property hereafter acquired and held by persons, corporations, or associations, forbidden by this act to hold the same, or held contrary to the intent of this act, and all such hereafter acquired, and held beyond the limit prescribed as aforesaid by this act, shall escheat to this commonwealth, and upon the same being adjudged to have escheated, under proceedings in court, by quo warranto, in all respects as is provided by law in the case of the usurpation of any corporate franchise, the same shall be taken in possession and disposed of, and with the like compensation to the person or persons informing and procuring the inquisition, as in cases of property escheated for defect of heirs: Provided, that no property now held, or hereafter law-

fully acquired, shall afterwards become defeasible in title by reason of any subsequent rise in the value thereof; but such rise, after it shall occur, shall be taken into view to preclude a further acquisition, and holding beyond the limit aforesaid: And provided, that the legislature may relieve, upon such terms as may be deemed just and for the public good, from any forfeiture as aforesaid, upon the payment to the party informing or prosecuting, his actual expenses, and such further reasonable compensation as the legislature may prescribe.

---

**An Act to prohibit Foreign Corporations from doing Business in Pennsylvania, without having known Places of Business and authorized Agents (April 22, 1874, P. L. 108).**

---

Sec. 1. That from and after the passage of this act, no foreign corporation shall do any business in this commonwealth, until said corporation shall have established an office or offices and appointed an agent or agents for the transaction of its business therein.

Sec. 2. It shall not be lawful for any such corporation to do any business in this commonwealth, until it shall have filed in the office of the secretary of the commonwealth a statement, under the seal of said corporation, and signed by the president or secretary thereof, showing the title and object of said corporation, the location of its office or offices, and the name or names of its authorized agent or agents therein; and the certificate of the secretary of the commonwealth, under the seal of the commonwealth, of the filing of such statement, shall be preserved for public inspection by each of said agents, in each and every of said offices.

Sec. 3. Any person or persons, agent, officer, or employé of any such foreign corporation, who shall transact any business within this commonwealth for any such foreign corporation, without the provisions of this act being complied with, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment not exceeding thirty days, and by fine not exceeding one thousand dollars, or either, at the discretion of the court trying the same.

---

**An Act authorizing Companies, incorporated under the Laws of any other State of the United States for the Manufacture of any Form of Iron, Steel, or Glass to erect and maintain Buildings and manufacturing Establishments, and to take, have, and hold Real Estate necessary and proper for manufacturing Purposes (June 9, 1881, P. L. 89).**

---

Sec. 1. It shall and may be lawful for any company incorporated under the laws of any other state, for the manufacture of any form of iron, steel, or glass, or for the quarrying of slate, granite, cement rock, stone, or rocks of any kind, or for dressing, polishing, or manufacturing the same, or any of them, or for any mineral springs company incorporated for the purpose of bottling and selling natural mineral springs water, or for any company incorporated for the purpose of manufacturing, supplying, and sale of ice, or for the manufacture and sale of chemicals, or for the manufacture and sale of foodstuffs and eatables, cement and cement products, and the quarrying of cement rock, to erect and maintain buildings and manufacturing establishments within this commonwealth, and to take, have, and hold real estate to an amount necessary and proper for corporate purposes: Provided, that nothing herein contained shall be deemed to prevent or relieve real estate, taken and held by such company under the provisions of this statute, from being taxed in like manner with other real estate within this commonwealth: And provided, further, that no foreign corporation shall be entitled to employ any greater amount of capital in any such business in this state than the same kind of corporations organized under the laws of this state are entitled to employ: And provided, further, that every such foreign corporation, doing business as aforesaid in this commonwealth, shall be liable to taxation to an amount not exceeding that imposed on corporations organized for similar purposes under the laws of this state, and every such foreign corporation taking the benefit of this act shall make the same returns to the auditor general that are now required by law of the corporations of this state.

**An Act to authorize Foreign Corporations to become Corporations of Pennsylvania and to prescribe the Mode for their so doing  
(June 9, 1881, P. L. 89).**

---

Sec. 1. That corporations, created by or under the laws of any other state, doing business in this state, and in which three or more of the stockholders are citizens of this state and which are embraced within corporations of the second class defined in section two (2) of an act, approved the twenty-ninth day of April, one thousand eight hundred and seventy-four, entitled "An act to provide for the incorporation and regulation of certain corporations", may become corporations of this state, under the provisions of said last-mentioned act, by preparing, having approved, and recorded a certificate, in which shall be stated:

First. The name of the corporation.

Second. Its purpose.

Third. The place or places where its business is to be transacted.

Fourth. The term for which it is to exist.

Fifth. The names and residences of the stockholders and the number of shares held by each.

Sixth. The number of its directors, and the names and residences, of those elected for the current year.

Seventh. The amount of its capital stock and the number and par value of the shares into which it is divided.

Eighth. The legislation under which it was originally created.

Ninth. Its financial condition at the date of the certificate, showing capital stock paid in, funded debt, floating debt, estimated value of property, and cash assets, if any.

Said certificate shall be accompanied by a certificate, under the seal of the corporation, showing the consent of a majority in interest of such corporation to such application for a charter, and to a renunciation of its original charter and of all privileges not enjoyed by corporations of its class, under the laws of this commonwealth.

Sec. 2. Said certificates shall be acknowledged by at least three of the directors of said corporation, before the recorder of deeds of the county in which the chief operations are to be carried on or in which the principal office is situated, and said directors shall also make and subscribe an oath or affirmation before him, to be endorsed on the said certificate, that the statements contained therein are true. The said certificate shall then be produced to the governor of this commonwealth, who shall examine the same, and if he find it to be in proper form and within the purposes named for corporations of the second class in the said second section of said act of April twenty-ninth, one thousand eight hundred and seventy-four, before mentioned, he shall approve thereof and endorse his approval thereon, and direct letters patent to issue, in the usual form, incorporating said stockholders and their successors into a body politic and corporate in deed and in law by the name chosen; and the said certificate shall be recorded, in the office of the secretary of the commonwealth, in a book to be by him kept for that purpose, and he shall forthwith furnish the auditor general an abstract therefrom, showing the name, location, amount of capital stock, and name and address of the treasurer of such corporation; the said original certificate, with all its endorsements, shall then be recorded in the office for the recording of deeds in and for the county where the chief operations are to be carried on.

Sec. 3. From the date of said letters patent, said corporation shall be and exist as a corporation of this commonwealth, under the provisions of law regulating corporations of its class and of its charter; and all of the rights, privileges, powers, immunities, lands, property, and assets, of whatever kind or character the same may be, possessed and owned by the original corporation, shall vest in, and be owned and enjoyed by, the said corporation so created as fully and with like effect as if its original charter had remained in force, save as by general law and said certificate expressly stated otherwise; and all suits, claims, and demands by said corporation in existence at the date of said new charter shall and may be sued, prosecuted, and collected under the laws governing the said corporation prior to its new charter, and

claims and demands of every nature and character in existence at the date of said new charter may be collected from and of said new chartered corporation, as fully and with like effect as if no change had taken place.

---

**An Act to authorize certain Corporations, incorporated and existing under the Laws of any other State of the United States, to purchase certain Real Estate at judicial Sales, and to hold and convey the same under certain Conditions (May 23, 1887, P. L. 176).**

---

Sec. 1. That any corporation, incorporated and existing under the laws of any other state of the United States and doing business in this state, and having therein one or more known places of business and an authorized agent or agents, upon whom process may be served, is hereby authorized and empowered to purchase, in its corporate name, at any sheriff's or other judicial sale, any real estate upon which such corporation may have or hold any mortgage, judgment, or lien, and to hold, lease, or sell and convey the same at pleasure to any person or persons, corporation or corporations, whatsoever: Provided, however, that any real estate, so purchased as aforesaid, shall be sold and conveyed within ten years from the date of such purchase.

Sec. 2. That all the rights and privileges and duties now by law accorded to and imposed upon lien creditors, purchasing at judicial sales, be and the same are hereby extended to said corporations so purchasing as aforesaid.

Sec. 3. That the title to any such real estate in this commonwealth now held by or in trust for any such foreign corporation, and acquired at any judicial sale, is hereby confirmed to the same effect as if the said real estate, had been purchased, held or owned under the provisions of this act.

---

**A Supplement to an Act, entitled "An Act to prohibit Foreign Corporations from doing Business in Pennsylvania without having known Places of Business and authorized Agents," approved April twenty-second, one thousand eight hundred and seventy-four; validating and providing for the Enforcement of Mortgages or Contracts, assigned bona fide ten or more Years prior to the Passage of this Act, by Foreign Corporations which have not complied with the Provisions of the Act to which this is a Supplement (May 11, 1901, P. L. 172).**

---

Sec. 1. That whenever a foreign corporation, not having complied with the provisions of the act to which this is a supplement, shall have assigned bona fide any mortgage or contract to any citizen of the state of Pennsylvania or to any other corporation, any such person or corporation, being the assignee or successor of such delinquent foreign corporation in the holding of any mortgage, obligation, or contract so assigned, may enforce the same in the courts of this state, notwithstanding such delinquent assignor foreign corporation has heretofore failed to file the statement and obtain the certificate required by the act to which this is a supplement: Provided, that the provisions of this act shall not apply to any assignment of any contract or mortgage unless such assignment shall have been made ten or more years prior to the passage of this act.

---

**An Act validating the Title to Real Estate, taken and held by Corporations of other States, without first having established known Places of Business and designated authorized Agents for the Transaction of their Business within this Commonwealth (April 25, 1907, P. L. 89).**

Sec. 1. Whenever any corporation organized and existing under the laws of any other state, and as such authorized to hold and convey real estate, has taken title to real estate situate within this commonwealth, without having first complied with the laws of this commonwealth relative to having known places of business and authorized agents for the transaction of its business, the title to such real estate, so taken and held, shall be good and valid, and such corporation may hold and convey the same with the same effect as though it had complied with all the provisions of the laws of this commonwealth relating to corporations of other states doing business therein, prior to the time of taking title thereto: Provided, however, the said corporation shall have, prior to the passage of this act, complied with the laws of this commonwealth in having a known place or places of business and an authorized agent or agents for the transaction of its business.

**An Act validating Contracts, Bonds, or Obligations made by Corporations of other States, without first having established known Places of Business and designated authorized Agents for the Transaction of their Business within this Commonwealth, and providing for the Enforcement of the same (May 23, 1907, P. L. 166).**

Sec. 1. Whenever any corporation organized and existing under the laws of any other state, and doing business within this commonwealth, shall have heretofore entered into any contract, bond, or obligation with any person, firm, or corporation, without having first established a known place or places of business and designated an authorized agent or agents for the transaction of its business in this commonwealth, the said contract, bond, or obligation shall be binding upon the parties thereto, and such corporation may enforce the same in the courts of this commonwealth: Provided that it has subsequently, and prior to the passage of this act, complied with the laws of this commonwealth by establishing a known place or places of business and designating an authorized agent or agents for the transaction of its business within the same: And provided, further, that it shall, before commencing any suit upon such contract, bond, or obligation, pay all taxes that would have accrued to the commonwealth of Pennsylvania if it had complied with the laws of Pennsylvania at the time of beginning to do business therein.

### **Philippines.<sup>1)</sup>**

**No. 1459. An Act providing for the Formation and Organization of Corporations, defining their Powers, fixing the Duties of Directors and other Officers thereof, declaring the Rights and Liabilities of Shareholders and Members, prescribing the Conditions under which such Corporations may transact Business, and repealing certain Articles of the Code of Commerce and all Laws or Parts of Laws in Conflict or inconsistent with this Act (March 1, 1906).**

#### **Chapter I. General provisions as to corporations.**

Short title of act, corporations defined, and how organized.

Sec. 1. The short title of this act shall be "The corporation law."

Sec. 2. A corporation is an artificial being created by operation of law, having

<sup>1)</sup> As in force March 1, 1911.



the right of succession and the powers, attributes, and properties expressly authorized by law or incident to its existence.

Sec. 3. Corporations may be public or private. Public corporations are those formed or organized for the government of a portion of the state. Private corporations are those formed for some private purpose, benefit, aim, or end, as distinguished from public corporations which have for their purpose the general good and welfare. Private corporations are divided into stock corporations and nonstock corporations. Corporations which have a capital stock divided into shares and are authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held are stock corporations. All other private corporations are nonstock corporations.

Sec. 4. Corporators of a corporation are those who compose the corporation, whether stockholders or members or both. Incorporators are those members or stockholders or both mentioned in the articles of incorporation as originally forming and composing the corporation.

Sec. 5. The owners of shares in a corporation which has capital stock are called stockholders or shareholders. Corporators of a corporation which has no capital stock and corporators of a corporation who do not own capital stock are members.

Sec. 6. Five or more persons, not exceeding fifteen, a majority of whom are residents of the Philippine Islands, may form a private corporation for any lawful purpose by filing with the division of archives, patents, copyrights, and trade-marks of the executive bureau articles of incorporation duly executed and acknowledged before a notary public, setting forth: 1. The name of the corporation; 2. The purpose for which the corporation is formed; 3. The place where the principal office of the corporation is to be established or located, which place must be within the Philippine Islands; 4. The term for which it is to exist, not exceeding fifty years, except as hereinafter provided; 5. The names and residences of the incorporators; 6. Unless otherwise provided by this act, the number of directors of the corporation, not less than five nor more than eleven. The directors named in the articles of incorporation shall be the directors until their successors are elected and qualified as provided by the by-laws: Provided, however, that at any time during the existence of the corporation the number of directors may be increased to any number not exceeding fifteen or diminished to any number not less than five in the case of a nonstock corporation by the formal assent of a majority of the members at a regular or special meeting of the membership and in the case of a stock corporation the number of directors may be increased to any number not exceeding eleven or diminished to any number not less than five by the formal assent of the stockholders of the corporation at a regular or special meeting of stockholders representing or holding a majority of the stock: And provided further, that a certificate setting out such increase or diminution in the numbers of directors of any corporation shall be duly signed and sworn to by the president, managing agent, secretary or clerk, or treasurer of such corporation and forthwith filed in the division of archives, patents, copyrights, and trade-marks of the executive bureau. 7. If it be a stock corporation, the amount of its capital stock in Philippine currency, and the number of shares into which it is divided; 8. If it be a stock corporation, the amount of capital stock actually subscribed, the names and residences of the persons subscribing, the amount subscribed by each, and the sum paid by each on his subscription. In addition to the foregoing facts, articles of incorporation of railroad, tramway, wagon road, and telegraph and telephone companies must state: 1. The starting point and terminus of the railroad, tramway, wagon road, or telegraph or telephone line, its estimated length, the provinces through which it will pass, and all of its intermediate branches and connections; 2. In the case of railroads or tramways, the gauge of the road, the motive power to be used and the means of applying it, and the materials to be used in the construction; 3. In the case of wagon roads, the width of the road, the method of construction, and the construction material to be used; 4. In the case of telegraph or telephone lines, the construction material, appliances, method of construction, and system to be used.

Sec. 7. Articles of incorporation of stock corporations, unless otherwise provided, shall be sufficient if they comply substantially with the following form:

*Articles of incorporation of the*

.....  
 (Here insert full name of corporation.)

*Know all men by these presents:*

That we, a majority of whom are residents of the Philippine Islands, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the Philippine Islands.

And we hereby certify—

First. That the name of said corporation shall be the .....

.....  
 (Here insert full name of corporation.)

Second. That the purposes for which such corporation is formed are .....

.....  
 (Here insert in full the purposes of the corporation.)

Third. That the place where the principal office of the corporation is to be established or located is.....

(Here insert place where principal office is to be established or located.)

Fourth. That the term for which said corporation is to exist is fifty years from and after the date of incorporation.

Fifth. That the names and residences of the incorporators of said corporation are as follows:

Name.

Whose Residence is at—

Sixth. That the number of directors of said corporation shall be.....

.....and that  
 (Here insert number of directors, not less than five nor more than fifteen.)

the names and residences of the directors of the corporation who are to serve until their successors are elected and qualified as provided by the by-laws are as follows, to wit:

Name.

Whose Residence is at—



Eleventh. (If the corporation be a railroad, tramway, wagon road, telegraph, or telephone corporation, here insert estimated length of railroad, tramway, wagon road, telegraph or telephone line, provinces through which such line will pass, and all of its intermediate branches and connections.)

Twelfth. (If the corporation be a railroad or tramway corporation, here insert gauge of road, motive power to be used, means of applying such power, and materials to be used in the construction.)

Thirteenth. (If the corporation be a wagon-road corporation, here insert width of the road, method of construction, and the construction material to be used.)

Fourteenth. (If the corporation be a telegraph or telephone corporation, here insert construction material, appliances, method of construction, and system to be used.)

In Witness Whereof, We have hereunto set our hands and seals this ...day of....., A. D. 190..

Signed and Sealed in the Presence of	{	[Seal.]
		[Seal.]
		[Seal.]
		[Seal.]
		[Seal.]
		[Seal.]
		[Seal.]
		[Seal.]
		[Seal.]
		[Seal.]
		[Seal.]

City or Municipality of..... }  
 Province of..... } ss.:  
*Philippine Islands.*

On this ..... day of ....., in the year A. D. one thousand nine hundred and ....., before me, ..... a notary public in and for the ..... personally appeared

(Here insert names of incorporators.)

known to me to be the persons whose names are subscribed and who executed the within instrument, and each of them acknowledged to me that he freely and voluntarily executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public.

City or Municipality of..... }  
 Province of..... } ss.:  
*Philippine Islands.*

(Here insert name of treasurer elected by subscribers.)

being duly sworn, deposes and says that on the ..... day of ....., A. D. 190.., he was duly elected by the subscribers named in the foregoing articles of incorporation as treasurer of the corporation to act as such until his successor has been duly elected and qualified in accordance with the by-laws of the corporation, and that as such treasurer he has been authorized by the

subscribers to receive for the corporation all subscriptions paid in by subscribers for the capital stock; that ..... pesos worth of stock has been actually

(Here insert amount.)

subscribed and that of said subscription ..... pesos,

(Here insert amount.)

(Or if property has been transferred in lieu of cash a description of the property and a statement of its fair valuation.)

..... has been actually transferred to him in trust and received by him for the benefit and to the credit of the corporation, and that at least twenty per centum of the entire capital stock has been subscribed and at least twenty-five per centum of the subscription has been actually paid to him (or that property described as follows ..... of the fair valuation of twenty-five per centum of the subscription has been actually transferred to him in trust and received by him) for the benefit and to the credit of the corporation.

Subscribed and sworn to before me this..... day of.....  
.....anno Domini nineteen hundred and.....

Sec. 8. The chief of the division of archives, patents, copyrights, and trade-marks of the executive bureau shall be entitled to collect and receive for the filing of articles of incorporation filed in accordance with the provisions of this act a fee of twenty-five pesos.

Sec. 9. The chief of the said division of archives, patents, copyrights, and trade-marks shall not file the articles of incorporation of any stock corporation unless accompanied by a sworn statement of a treasurer elected by the subscribers showing that at least twenty per centum of the entire capital stock has been subscribed, and that at least twenty-five per centum of the subscription has been paid to him in actual cash for the benefit and to the credit of the corporation, or that there has been transferred to him in trust and received by him for the benefit and to the credit of the corporation property the fair valuation of which is equal to twenty-five per centum of the subscription.

Sec. 10. A copy of any articles of incorporation filed with the said division of archives, patents, copyrights, and trade-marks in pursuance of this act and duly certified by the chief of the said division shall be received in the courts and all other places as prima facie evidence of the facts therein stated.

Sec. 11. The chief of the division of archives, patents, copyrights, and trade-marks of the executive bureau, on the filing of the articles of incorporation provided by this act to be filed, shall issue to the incorporators a certificate, under the seal of his office, setting forth that such articles of incorporation have been duly filed in his office in accordance with law; and thereupon the persons signing the articles of incorporation and their associates and successors shall constitute a body politic and corporate, under the name stated in the certificate, for the term specified in the articles of incorporation, not exceeding fifty years, unless sooner legally dissolved or unless otherwise provided in this act.

Sec. 12. No corporation shall occupy or use any private property without the consent of the owners or prior condemnation proceedings and paying or tendering just compensation therefor, and no corporation shall occupy or use any public lands, places, roads, highways, streets, avenues, lanes, alleys, sidewalks, bridges, or any other public property whatever without first securing a franchise for such use or occupancy from the government of the Philippine Islands: Provided, however, that street railways, tramways, electric light, power, or telephone corporations may, in the manner prescribed in act numbered six hundred and sixty-seven, secure a franchise to occupy or use any public lands, places, roads, highways, streets, avenues, lanes, alleys, sidewalks, bridges, or any other public property necessary for the transaction of its business: And provided further, that street railway, tramway, telephone, telegraph, electric power or light corporations for the purpose of doing business in the city of Manila, and railroad corporations for the purpose of doing business in the Philippine Islands, may form and organize as corporations under this act.

#### General powers of corporations.

Sec. 13. Every corporation has the power: 1. Of succession by its corporate name for the period of time limited in the articles of incorporation and not exceed-

ing the time prescribed by law; 2. To sue and be sued in any court; 3. To transact the business for which it was lawfully organized, and to exercise such powers and to perform such acts as may be reasonably necessary to accomplish the purpose for which the corporation was formed; 4. To make and use a common seal and to alter the same at pleasure; 5. To purchase, hold, convey, sell, lease, let, mortgage, encumber, and otherwise deal with such real and personal property as the purposes for which the corporation was formed may permit, and the transaction of the lawful business of the corporation may reasonably and necessarily require, unless otherwise prescribed in this act: Provided, that no corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it is created, and every corporation authorized to engage in agriculture shall be restricted to the ownership and control of not to exceed one thousand and twenty-four hectares of land; and it shall be unlawful for any member of a corporation engaged in agriculture or mining and for any corporation organized for any purpose except irrigation to be in anywise interested in any other corporation engaged in agriculture or in mining. Corporations, however, may loan funds upon real-estate security and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. 6. To appoint and dismiss such subordinate officers or agents as the business or welfare of the corporation may demand, and to allow such subordinate officers and agents suitable compensation; 7. To make by-laws, not inconsistent with any existing law, for the fixing or changing of the number of its officers and directors within the limits prescribed by law, and for the transferring of its stock, the administration of its corporate affairs, the management of its business and the care, control, and disposition of its property; 8. To admit members to the corporation; if it be a stock corporation, to issue stock to stockholders and to sell stock or shares of stockholders for the payment of any indebtedness of the stockholders to the corporation; 9. To enter into any obligation or contract essential to the proper administration of its corporate affairs or necessary for the proper transaction of the business or accomplishment of the purpose for which the corporation was organized.

Sec. 14. No corporation created under this act shall possess or exercise any corporate powers except those conferred by this act and except such as are necessary to the exercise of the powers so conferred.

Sec. 15. No corporation doing business in the Philippine Islands or receiving any grant, franchise, or concession from the government of the Philippine Islands shall use, employ, or contract for the labor of persons claimed or alleged to be held in involuntary servitude, and any corporation violating the provisions of this section shall forfeit all charters, grants, franchises, and concessions for doing business in said Islands, and in addition shall be deemed guilty of an offense and shall be punished by a fine of twenty thousand pesos.

Sec. 16. No corporation organized under this act shall create or issue bills, notes, or other evidence of debt for circulation as money, and no corporation shall issue stock or bonds except in exchange for actual cash paid to the corporation or for property actually received by it at a fair valuation equal to the par value of the stock or bonds so issued. No corporation shall make or declare any stock or bond dividend or any dividend whatever except from the surplus profits arising from its business, or divide or distribute its capital stock or property other than actual profits among its members or stockholders until after the payment of its debts and the termination of its existence by limitation or lawful dissolution: Provided, however, that banking, savings and loan, and trust corporations may receive deposits and issue certificates of deposit, checks, drafts, and bills of exchange and the like in the transaction of the ordinary business of banking, savings and loan, and trust corporations.

Sec. 17. No corporation shall increase or diminish its capital stock, or incur, create, or increase any bonded indebtedness unless, at a stockholders' meeting regularly called for the purpose, two-thirds of the entire corporate capital stock subscribed shall favor the increase or diminution of the capital stock, or a majority of the subscribed capital stock shall favor the incurring, creating, or increasing of any bonded indebtedness. Written or printed notice of the proposed increase or diminution of the capital stock or of the incurring, creating, or increasing of

any bonded indebtedness and of the time and place of the stockholders' meeting at which the proposed increase or diminution of the capital stock or the incurring, creating, or increasing of any bonded indebtedness is to be considered must be addressed to each stockholder at his place of residence as shown by the books of the corporation and registered and deposited so addressed in the postoffice with postage prepaid.

A certificate in duplicate must be signed by a majority of the directors of the corporation and countersigned by the chairman and secretary of the stockholders' meeting, setting forth: a) That the requirements of this section have been complied with; b) The amount of the increase or diminution of the capital stock; c) If an increase of the capital stock, the amount thereof actually subscribed, the names and residences of the persons subscribing, the amount subscribed by each, and the amount paid by each on his subscription in cash or property; d) Any bonded indebtedness to be created, incurred, or increased; e) The actual indebtedness of the corporation on the day of the meeting; f) The amount of stock represented at the meeting; g) The vote authorizing the increasing or diminution of the capital stock, or the incurring, creating, or increasing of any bonded indebtedness.

One of the duplicate certificates shall be kept on file in the office of the corporation and the other shall be filed in the office of the chief of the division of archives, patents, copyrights, and trade-marks of the executive bureau and attached by him to the original articles of incorporation. From and after the filing of the duplicate certificate with the chief of the said division the capital stock shall stand increased or diminished and the incurring, creating, or increasing of any bonded indebtedness authorized as the certificate may declare.

The chief of the said division of archives, patents, copyrights, and trade-marks shall be entitled to collect the sum of twenty pesos for the filing of said duplicate certificate. Provided, however, that if the said duplicate certificate increases the amount of capital stock, the chief of the said division of archives, patents, copyrights, and trade-marks shall not file such certificate unless accompanied by the sworn statement of the treasurer of the corporation lawfully holding office at the time of the filing of the certificate, showing that at least twenty per centum of such increased capital stock has been subscribed and that at least twenty-five per centum of the amount subscribed has been either paid in actual cash to the corporation or that there has been transferred to the corporation property the fair valuation of which is equal to twenty-five per centum of the subscription.

Sec. 18. Any corporation may amend its articles of incorporation by a majority vote of its board of directors or trustees and the vote or written assent of two-thirds of its members, if it be a nonstock corporation, or, if it be a stock corporation, by the vote or written assent of the stockholders representing at least two-thirds of the subscribed capital stock of the corporation. A copy of the articles of incorporation as amended, duly certified to be correct by the president and the secretary of the corporation and a majority of the board of directors or trustees, shall be filed in the office of the chief of the division of archives, patents, copyrights, and trade-marks of the executive bureau who shall attach the same to the original articles of incorporation on file in his office. From the time of filing such copy of the amended articles of incorporation, the corporation shall have the same powers and it and the members or stockholders thereof shall thereafter be subject to the same liabilities as if such amendment had been embraced in the original articles of incorporation: Provided, however, that the life of said corporation shall not be extended by said amendment beyond the time fixed in the original articles: And provided, that the original articles and amended articles together shall contain all provisions required by law to be set out in the articles of incorporation: And provided further, that nothing in this section shall be construed to authorize any corporation to increase or diminish its capital stock or so as to affect any rights or actions which accrued to others between the time of filing the original articles of incorporation and the filing of the amended articles. The chief of the division of archives, patents, copyrights, and trade-marks shall be entitled to collect and receive the sum of ten pesos for filing said copy of the amended articles of incorporation.

Sec. 19. If a corporation does not formally organize and commence the transaction of its business or the construction of its works within two years from date of its incorporation, its corporate powers cease. The due incorporation of any corporation claiming in good faith to be a corporation under this act and its right

to exercise corporate powers shall not be inquired into collaterally in any private suit to which the corporation may be a party, but such inquiry may be had at the suit of the insular government on information of the attorney-general.

### By-laws.

Sec. 20. Every corporation formed under this act must, within one month after the filing of articles of incorporation with the division of archives, patents, copyrights, and trade-marks of the executive bureau, adopt a code of by-laws for its government not inconsistent with this act or any act of congress having force and effect in the Philippine Islands. For the adoption of any by-law or by-laws by the corporation the affirmative vote of the stockholders representing a majority of all of the subscribed capital stock, whether paid or unpaid, or of a majority of the members if there be no capital stock is necessary. The by-laws shall be signed by the stockholders or members voting for them and shall be kept in the principal office of the corporation, subject to the inspection of the stockholders or members during office hours, and a copy thereof, duly certified to by a majority of the directors and countersigned by the secretary of the corporation, shall be filed with the chief of the said division of archives, patents, copyrights, and trade-marks, who shall attach the same to the original articles of incorporation and collect and receive a fee of two pesos for the filing thereof.

Sec. 21. A corporation may, unless otherwise prescribed by this act, provide in its by-laws for the time, place, and manner of calling and conducting regular or special meetings of its directors, and the time and manner of calling and conducting regular or special meetings of stockholders or members; the number of stockholders or members necessary to constitute a quorum for the transaction of business at meetings of stockholders or members; the conditions upon which members of nonstock corporations shall be entitled to vote; the mode of securing proxies of stockholders or members and voting them; the qualifications, duties, and compensation of directors, officers, and employees; the time for holding the annual election of directors and the mode and manner of giving notice thereof; the manner of election and the term of office of all officers other than directors and those elected by the directors or trustees; the penalties for violation of by-laws, not exceeding in any case the sum of two hundred pesos; in the case of stock corporations, the manner of issuing stock certificates or shares of stock; and such other matters not otherwise provided for by this act as may be necessary for the proper or convenient transaction of the business of the corporation.

Sec. 22. The owners of a majority of the subscribed capital stock, or a majority of the members if there be no capital stock, may, at a regular or special meeting duly called for the purpose, amend or repeal any by-law or adopt new by-laws. The owners of two-thirds of the subscribed capital stock, or two-thirds of the members if there be no capital stock, may delegate to the board of directors the power to amend or repeal any by-law or to adopt new by-laws: Provided, however, that any power delegated to the board of directors to amend or repeal any by-law or to adopt new by-laws shall be considered as revoked whenever a majority of the stockholders or of the members of the corporation shall so vote at a regular or special meeting.

Sec. 23. Whenever any amendment or new by-law is adopted such amendment or by-law shall be attached to the original by-laws in the office of the corporation and a copy thereof, duly certified to by a majority of the directors and countersigned by the secretary or clerk of the corporation, shall be filed with the chief of the division of archives, patents, copyrights, and trade-marks of the executive bureau, who shall attach the same to the original articles of incorporation and original by-laws on file in his office and collect and receive the sum of two pesos for the service.

### Meetings.

Sec. 24. The meetings of the members or stockholders of a corporation shall be held at the place where the principal office of the corporation is established or located and where practicable in the principal office of the corporation. Directors' meetings may be held at the place fixed in the by-laws.

Sec. 25. The proceedings had and the business transacted at any meeting of the stockholders or members of a corporation, if within the powers of the corpo-



ration, shall be valid even if the meeting be improperly held or called: Provided, that the stockholders or members of the corporation are present at the meeting. At any such meeting the stockholders or members of the corporation may elect officers and fill vacancies then existing, and may transact such other business of the corporation as might lawfully be transacted at a regular meeting thereof.

Sec. 26. Whenever, from any cause, there is no person authorized to call a meeting, or when the officer authorized to do so refuses, fails, or neglects to call a meeting, any judge of a court of first instance, on the showing of good cause therefor, may issue an order to any stockholder or member of a corporation, directing him to call a meeting of the corporation by giving the proper notice required by this act or the by-laws; and if there be no person legally authorized to preside at such meeting, the judge of the court of first instance may direct the person calling the meeting to preside at the same until a majority of the members or stockholders representing a majority of the stock present and permitted by law to be voted have chosen one of their number to act as presiding officer for the purposes of the meeting.

Sec. 27. Executors, administrators, guardians, or other persons in a position of trust and legally authorized may vote as stockholders upon stock held in their representative capacity.

**Directors of corporations — their powers, duties, election, and organization.**

Sec. 28. Unless otherwise provided in this act, the corporate powers of all corporations formed under this act shall be exercised, all business of such corporations conducted, and all property of such corporations controlled and held by a board of not less than five nor more than eleven directors to be elected from among the holders of stock, or, where there is no stock, from the members of the corporation.

Sec. 29. At the meeting for the adoption of the original by-laws, or at such subsequent meeting as may be then determined, directors shall be elected to hold their offices for one year and until their successors are elected and qualified. Thereafter the directors of the corporation shall be elected annually by the stockholders if it be a stock corporation or by the members if it be a nonstock corporation, and if no provision is made in the by-laws for the time of election the same shall be held on the first Tuesday after the first Monday in January. Unless otherwise provided in the by-laws, two weeks' notice of the election of directors must be given by publication in some newspaper of general circulation devoted to the publication of general news at the place where the principal office of the corporation is established or located, and by written notice deposited in the post-office, postage prepaid, addressed to each stockholder, or, if there be no stockholders, then to each member, at his last known place of residence. If there be no newspaper published at the place where the principal office of the corporation is established or located, a notice of the election of directors shall be posted for a period of three weeks immediately preceding the election in at least three public places, in the place where the principal office of the corporation is established or located.

Sec. 30. Every director must own in his own right at least one share of the capital stock of the stock corporation of which he is a director, which stock shall stand in his name on the books of the corporation. Any director who ceases to be the owner of a least one share of the capital stock of a stock corporation of which he is a director shall thereby cease to be a director. Directors of all other corporations must be members thereof and at least two of the directors of all corporations organized under this act must be residents of the Philippine Islands.

Sec. 31. At all elections of directors there must be present, either in person or by representative authorized to act by written proxy, the owners of the majority of the subscribed capital stock entitled to vote, or, if there be no capital stock, then a majority of the members entitled to vote. The elections must be by ballot, and every stockholder entitled to vote shall have the right to vote in person or by proxy the number of shares of stock standing at the time fixed in the by-laws in his own name on the stock books of the corporation, and said stockholder may vote such number of shares for as many persons as there are directors or he may cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares shall equal, or he may distribute them on the same principle among as many candidates as he shall see fit: Provided, that the whole number of votes cast by him shall not exceed the number of

shares owned by him as shown by the books of the corporation multiplied by the whole number of directors to be elected: And provided, that no stock declared delinquent by the board of directors for unpaid subscriptions shall be voted. Members of corporations which have no capital stock may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all of the candidates. Directors receiving the highest number of votes shall be declared elected. Any meeting of the stockholders or members called for an election may adjourn from day to day or from time to time if for any reason no election is had or if there are not present or represented by proxy at the meeting the owners of a majority of the subscribed capital stock entitled to vote or if there be no capital stock a majority of the members entitled to vote.

Sec. 32. If for any cause no meeting is held on the day fixed and appointed by law or by the by-laws of the corporation for holding the election of directors, a meeting may be called for that purpose either by the directors or as provided in section twenty-six; and at the meeting held in pursuance of such call the election may be had with the same effect as if it had taken place on the day fixed by law or by the by-laws of the corporation.

Sec. 33. Immediately after election the directors of a corporation must organize by the election of a president, who must be one of their number, a secretary or clerk who shall be a resident of the Philippine Islands and a citizen of the Philippine Islands or of the United States, and such other officers as may be provided for in the by-laws. The directors and officers so elected shall perform the duties enjoined on them by law and by the by-laws of the corporation. A majority of the directors shall constitute a quorum for the transaction of corporate business, and every decision of a majority of the quorum duly assembled as a board shall be valid as a corporate act.

Sec. 34. Directors of a corporation may be removed from office by a vote of two-thirds of the members entitled to vote, or, if the corporation be a stock corporation, by a vote of the stockholders holding or representing two-thirds of the subscribed capital stock entitled to vote: Provided, however, that such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose, and in either case, after previous notice to stockholders or members of the intention to propose such removal at the meeting. A special meeting of the stockholders or members of a corporation for the purpose of removal of directors, or any of them, must be called by the secretary or clerk on order of the president or on the written demand of a majority of the members entitled to vote, or, if it be a stock corporation, on the written demand of the stockholders representing or holding at least one-half of the shares entitled to be voted. Should the secretary or clerk fail or refuse to call the special meeting demanded or fail or refuse to give the notice, or if there is no secretary or clerk, the call for the meeting may be addressed directly to the members or stockholders by any member or stockholder of the corporation signing the demand. Notice of the time and place of any such meeting, as well as of the intention to propose such removal, must be given by publication or by written notice as prescribed by section twenty-nine. In case of removal on the vote of the stockholders or the members, as the case may be, the vacancy so created may be filled by election at the same meeting without further notice, or at any general meeting or at any special meeting called for the purpose, after giving notice as prescribed by section twenty-nine.

#### Stocks and stockholders.

Sec. 35. The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or the vice-president, countersigned by the secretary or clerk and sealed with the seal of the corporation, shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate indorsed by the owner or his attorney in fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is entered and noted upon the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate, and the number of shares transferred.

No share of stock against which the corporation holds any unpaid claim shall be transferable on the books of the corporation.

Sec. 36. Subscribers for stock shall pay to the corporation quarterly on all unpaid subscriptions interest, from the date of subscription, at the rate of six per centum per annum unless otherwise provided in the by-laws. No certificate of stock shall be issued to a subscriber as fully paid up until the full par value thereof has been paid by him to the corporation. Subscribed shares not fully paid up may be voted provided no subscription call or interest due on subscription is unpaid and delinquent.

**Calls for unpaid subscriptions and assessment of stock.**

Sec. 37. The board of directors or trustees of any stock corporation formed, organized, or existing under this act may at any time declare due and payable to the corporation unpaid subscriptions to the capital stock and may collect the same with interest accrued thereon or such percentage of said unpaid subscriptions as it may deem necessary.

Sec. 38. The order of the board of directors declaring payable any unpaid subscriptions to the capital stock shall state what percentage of the unpaid subscription is due and payable, when, where, and to whom payable, the date of delinquency, which must be subsequent to the full term of publication of the notice of call for unpaid subscriptions and not less than thirty days nor more than sixty days from the date of the order of the board calling for the payment of unpaid subscriptions, and the date on which the delinquent stock will be sold, which must not be less than fifteen days nor more than sixty days from the date the stock becomes delinquent.

Notice of the order declaring unpaid subscriptions to the capital stock due and payable shall be given by the secretary or clerk of the corporation substantially in the following form:

.....  
 (Here insert name of corporation in full and location of principal office.)  
 Notice is hereby given that at a meeting of the board of directors held on the.....  
 (Here insert date.)  
 unpaid subscriptions to the capital stock of the corporation (or the percentage thereof declared due) were declared due and payable..... All stock upon which  
 (Here insert when, to whom, and where.)  
 the subscription, with interest accrued, has not been paid on.....  
 (Here insert date fixed for delinquency.)  
 will be delinquent and advertised for sale at public auction, and unless payment of the subscriptions, with interest and costs accrued, is made before sale of the stock, same will be sold on the..... to pay the amount of the subscription  
 (Here insert date fixed for sale.)  
 and accrued interest, together with the costs of advertising and expenses of sale.  
 .....  
 (Here insert signature of secretary or clerk,  
 .....  
 with location of office.)

Sec. 39. If the whole or any part of the subscription on unpaid capital stock with interest accrued is unpaid on the date of delinquency, such unpaid stock becomes subject to sale, and the secretary or clerk, unless otherwise ordered by the board of directors, must give notice of delinquency and sale substantially in the following form:

.....  
 (Here insert name of the corporation in full and location of principal office.)  
 Notice.  
 The following-described stock is delinquent for nonpayment of the unpaid subscription thereon, with interest accrued, due and payable on the....., in the amounts  
 (Here insert date.)  
 set opposite the names of the respective shareholders, as follows:.....  
 (Here insert names, number of each  
 .....  
 certificate unpaid, number of shares, amount due on unpaid subscription, date from which interest is accrued.)  
 Now, therefore, in accordance with law, so many shares of said stock belonging to the several owners as may be necessary will be sold at .....  
 .....  
 (Here insert principal office of the corporation.)  
 on the..... at..... of said day, to pay the amount  
 (Here insert date.) (Here insert hour.)  
 of the unpaid subscription thereon, together with interest, costs of advertising, and expenses of sale.  
 .....  
 (Here insert signature of secretary or clerk  
 .....  
 and location of office.)

Sec. 40. Notice of call for unpaid subscriptions must be either personally served upon each stockholder or deposited in the postoffice, postage prepaid, addressed to him at his place of residence, if known, and, if not known, addressed to the place where the principal office of the corporation is situated. The notice must also be published once a week for four successive weeks in some newspaper of general circulation devoted to the publication of general news published at the place where the principal office of the corporation is established or located, and posted in some prominent place at the works of the corporation if any such there be. If there be no newspaper published at the place where the principal office of the corporation is established or located, then such notice may be published in any newspaper of general circulation devoted to the publication of general news in the Islands.

Sec. 41. Notices of delinquency and sale of stock for unpaid subscriptions must be published in the newspapers specified in the section immediately preceding, and, when published in a daily newspaper, must be published in ten successive issues of said newspaper previous to the day of sale, and, when published in a weekly newspaper, must be published two weeks previous to the sale and the first publication must be fifteen days prior to the day of sale.

Sec. 42. From and after the publication of the notices of delinquency and sale of stock for unpaid subscriptions the corporation acquires jurisdiction to sell and convey all of the stock described in the notices of sale, but the corporation must sell no more of the stock mentioned in the notices than is necessary to pay the amount of the subscription due, with interest accrued, and the expenses of advertising and the costs of sale.

Sec. 43. On the day and at the place and hour of sale specified in the notices of delinquency and sale of stock for unpaid subscriptions the secretary or clerk shall, unless otherwise ordered by the board of directors, sell or cause to be sold at public auction, to the highest bidder, for cash, so many shares of the stock described in the notice as may be necessary to pay the amount due on the subscription, with interest accrued, expenses of advertising, and costs of sale.

Sec. 44. The person offering at such sale to pay the unpaid subscription, with interest accrued, together with expenses of advertising and costs of sale, for the smallest number of shares of fraction of a share, shall be the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation on payment of the amount due on the unpaid subscription, together with the expense of advertising and costs of sale.

If, at the sale of the stock for unpaid subscription, no bidder offers to pay the amount due with expenses of advertising and costs of sale, the same may be bid in by the corporation, through the secretary or clerk or president or any shareholder thereof, and the amount of subscription due, together with the expenses of advertising and costs of sale, shall be credited as paid in full on the books of the corporation and entry of the transfer of the stock to the corporation made.

Sec. 45. The legal title to all stock purchased by the corporation at sales of stock for unpaid subscription is vested in the corporation, and the stock so purchased may be disposed of by the stockholders in accordance with law and the by-laws of the corporation by a majority vote of all the remaining shares.

Sec. 46. The dates fixed in any call for unpaid subscription or in any notice of delinquency and sale of stock for unpaid subscription, published according to the provisions of this article, may be extended from time to time, for a period of not more than thirty days, by order of the board of directors entered upon the records of the corporation, but no order extending the time for the performance of any act specified in such notice is effectual unless the notice of such extension or postponement is appended to the notice to which the order relates, and is thereafter published with the notice.

Sec. 47. No action can be sustained to recover stock sold for delinquent unpaid subscription upon the ground of irregularity or defect in the calls for such unpaid subscription, or irregularity or defect in the notice of delinquency and sale, or in the sale itself of stock for unpaid subscription, unless the party seeking to maintain such action first pays or tenders to the party holding the stock the sum for which the same was sold, together with all subsequent calls which may have been paid upon the stock so sold, with interest from the date of payment at the rate of seven per centum per annum, and no such action shall be maintained unless it is commenced by the filing of a complaint and the issuance of summons within six months from date of sale.

Sec. 48. The posting of the notices of call for unpaid subscriptions and notices of delinquency and sale of stock for unpaid subscriptions may be proved *prima facie* by affidavit of the secretary or clerk or other officer of the corporation, and the publication of such notices may be proved to the same extent by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the notices were published. The time and place of sale of the stock, the quantity of the stock sold, its particular description, the person to whom the stock was sold, the price for which it was sold, and the amount of the purchase money paid may be proved *prima facie* by the affidavit of the auctioneer or of the secretary or clerk or of the treasurer of the corporation.

The affidavits mentioned in this section must be filed in the office of the corporation, and copies thereof, certified to be true and correct by the secretary of the corporation, may be received by the courts, and others, as *prima facie* evidence of the facts therein stated.

Sec. 49. Nothing in this act shall prevent the directors from collecting, by action in any court of proper jurisdiction, the amount due on any unpaid subscription, together with accrued interest and costs and expenses incurred.

Sec. 50. No stock delinquent for unpaid subscription shall be voted or entitled to a vote or representation at any stockholders' or directors' meeting, or for any corporate purpose whatever.

#### Corporate books and records, reports of corporations, and government examination and inspection of corporations.

Sec. 51. All business corporations shall keep and carefully preserve a record of all business transactions, and a minute of all meetings of directors, members, or stockholders, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. On the demand of any director, member, or stockholder, the time when any director, member, or stockholder entered or left the meeting must be noted on the minutes, and on a similar demand, the yeas and nays must be taken on any motion or proposition and a record thereof carefully made. The protest of any director, member, or stockholder on any action or proposed action must be recorded in full on his demand.

The record of all business transactions of the corporation and the minutes of any meeting shall be open to the inspection of any director, member, or stockholder of the corporation at reasonable hours.

Sec. 52. Business corporations must also keep a book to be known as the "Stock and transfer book", in which must be kept a record of all stock, the names of the stockholders or members alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe. The stock and transfer book shall be open to the inspection of any director, stockholder, or member of the corporation at reasonable hours.

Sec. 53. Every public-utility or public-service corporation whether domestic or foreign, doing business for profit in the Philippine Islands must file with the insular auditor, on or before the thirty-first day of March of each year, a report of its operations for the preceding year ending December thirty-first, which report shall be verified by the oath of the president or manager and the secretary or clerk or treasurer of the corporation, and shall show clearly: 1. The full amount of the capital stock and the amount thereof actually paid into the treasury on the thirty-first day of December immediately preceding; 2. Its available assets on the thirty-first day of December immediately preceding, including cash and real and personal property and credits due the corporation, and the incumbrances, if any, thereon; 3. The nature and amount of its entire indebtedness, on the thirty-first day of December immediately preceding; 4. The total receipts and expenditures for the calendar year immediately preceding; 5. The profit or loss of the corporation for the calendar year immediately preceding; 6. The number and amount of dividends paid during the calendar year immediately preceding: Provided, however, that none of the contents of such report shall be made public without the express authorization of the governor-general: And provided further, that in case the fiscal year of a corporation

does not terminate with the thirty-first day of December it shall be deemed a sufficient compliance with this section if the report states the details required down to the close of the regular fiscal year of the corporation. In such case the report of the corporation shall be filed with the Insular auditor within three months after the close of its fiscal year.

Sec. 54. The governor-general may, at any time, order the attorney-general, the insular auditor, the insular treasurer, or any other officer of the government to make an examination into the business affairs, administration, and condition of any corporation transacting business in the Philippine Islands, and thereupon it shall be the duty of the attorney-general, the insular auditor, the insular treasurer, or any other officer designated, to make such examination; and for the purposes thereof the attorney-general, the insular auditor, the insular treasurer, or other official designated shall have the authority to administer oaths to the directors, officers, stockholders, or members of any corporation or to other persons, and to examine under oath or otherwise such directors, officers, stockholders, members, or other persons in relation to the business transacted by said corporation, the administration of its affairs and the condition thereof. For the purposes of such examination the books, papers, letters, and documents belonging to such corporation or pertaining to its business administration or condition shall be open to the inspection of the attorney-general, the insular auditor, the insular treasurer, or other officer designated, and upon the application of either of them to any court of first instance, or to any judge of the supreme court, a subpoena may be issued directing any person in the Philippine Islands to appear as a witness and to produce for the inspection of the attorney-general, the insular auditor, the insular treasurer, or other officer designated, any books, papers, documents, letters, or other records in his possession. Any witness failing to obey such subpoena shall be liable to punishment by the supreme court or the court of first instance, as the case may be, in the same manner and to the same extent as if he had disobeyed a subpoena issued out of the supreme court or the court of first instance in a matter pending before either of said courts.

The attorney-general, the insular auditor, the insular treasurer, or other officer designated, as the case may be, shall make a full and complete report to the governor-general of the examination made by him, together with his recommendations, and the governor-general, if he deems proper, shall direct the attorney-general to take such proceedings as the report may seem to justify and the state of the case require.

Sec. 55. The attorney-general, the insular auditor, the insular treasurer, or other officer designated by the governor-general to make the examination shall not disclose to anyone other than the governor-general the details or results of the examination or investigation, and if the officer designated to make the examination discloses to any person other than the governor-general the details or results of the examination or investigation, he shall be punished by imprisonment for not less than one year nor more than five years or by a fine of not less than five hundred pesos nor more than two thousand pesos, or both such fine and imprisonment, in the discretion of the court.

#### Forced sale of franchises.

Sec. 56. Any franchise granted to a corporation to collect tolls, or to occupy, enjoy, or use public property or any portion of the public domain or any right of way over public property or the public domain, and any rights and privileges acquired under such franchise, may be levied upon and sold under execution, together with the property necessary for the enjoyment, the exercise of the powers, and the receipt of the proceeds of such franchise or right of way, in the same manner and with like effect as any other property to satisfy any judgment against the corporation: Provided, that the sale of the franchise or right of way and the property necessary for the enjoyment, the exercise of the powers, and the receipt of the proceeds of said franchise or right of way is specially decreed and ordered in the judgment: And provided further, that the sale shall not become effective until confirmed by the court after due notice.

Sec. 57. The officer selling any franchise under execution shall, after confirmation by the court, issue a certificate of purchase to the purchaser of the franchise and shall place such purchaser in peaceful possession of all property described in the judgment as necessary for the enjoyment of the franchise or right of way, the exercise of its powers, or the receipt of its proceeds.

Sec. 58. From and after issuance of the certificate of purchase of the franchise or right of way, the purchaser shall exercise all the powers and privileges and enjoy all the rights and be subjected to all the liabilities of the franchise or grant of right of way to the same extent as would have been the corporation had the sale not taken place.

Sec. 59. The purchaser of the franchise or his assignee shall be entitled to recover any penalties or damages recoverable by the corporation and imposed or allowed by law for an injury to the franchise, or any property necessary for the enjoyment of the franchise or right of way, or of the privileges of either, occurring during the time he holds the franchise or right of way. Said purchaser or his assignee may use the name of the corporation in any action necessary to recover the penalties and damages named in this section, and the recovery of such penalties or damages shall be a bar to any subsequent action to recover the same by or on behalf of the corporation.

Sec. 60. The corporation whose franchise or right of way is sold as provided in section fifty-six hereof, except as to the rights and powers acquired by the purchaser and the duties, obligations, penalties, and forfeitures imposed on the purchaser of the franchise or right of way, retains the same powers, is bound to discharge the same duties, and is liable to the same obligations, penalties, and forfeitures as before such sale. The rights acquired by the purchaser of the franchise shall be subject to the prior rights of mortgagees and lien holders.

Sec. 61. The sale of any franchise and right of way under execution shall be made in the place in which the corporation has its principal office.

#### Voluntary dissolutions of corporations.<sup>1)</sup>

Sec. 62. A corporation may be dissolved at any time by the court of first instance for the province where the principal office of the corporation is situate upon the voluntary application of a majority of the members or of the stockholders holding at least two-thirds of all shares of stock issued or subscribed.

Sec. 63. The application for dissolution must be in writing and shall set forth all claims and demands against the corporation, and that, at a meeting of the members or stockholders of the corporation called for that purpose, the dissolution of the corporation was resolved upon by a majority of the members or, if a stock corporation, by the affirmative vote of the stockholders holding or representing two-thirds of all shares of stock issued or subscribed.

Sec. 64. The application for dissolution must be signed by a majority of the board of directors or other officers having the management of the affairs of the corporation and must be verified by the president or secretary or clerk or some director of the corporation.

Sec. 65. Notice of the application for dissolution must be given by the clerk of the court upon order of the court by publication for not less than thirty days nor more than sixty days in some newspaper of general circulation devoted to the publication of general news published at the place where the principal office of the corporation is established or located, or, if there be no such newspaper, then in some newspaper of general circulation in the islands devoted to the publication of general news. The notice must also be posted in at least three public places at the place where the principal office of the corporation is established or located. The date on which the right of objection to the application expires must be set out in the notice and must be subsequent to the period prescribed for the publication of such notice.

Sec. 66. On or before the date on which the right of objection expires as declared in the notice, any person may file objections to the dissolution of the corporation. The issue made by the application and the objection thereto shall be tried by the court upon five day's notice to the applicants and to the persons who have filed objections, and shall be determined by the court as justice and right may require. Should no objections to the application be filed on or before the date prescribed for filing the same, the court shall proceed to hear the application, and if the application is sufficient and all the material statements made therein are shown to be true, the court may appoint receivers to collect and take charge of the assets of the corporation and shall declare the corporation dissolved and decree such disposition of its assets and property remaining as the law may permit and justice may require.

<sup>1)</sup> See further as to winding-up Act No. 1956, reprinted in Vol. 7. pp. 324—343.

Sec. 67. The application, notices thereof and proof of publication and posting of notices, the objections filed to the dissolution, if any there be, the declaration of dissolution, and the evidence and proofs taken of dissolution shall constitute the record in the case, and an appeal from the judgment may be taken to the supreme court as from other judgments of courts of first instance.

### Foreign corporations.

Sec. 68. No foreign corporation or corporations formed, organized, or existing under any laws other than those of the Philippine Islands shall be permitted to transact business in the Philippine Islands until after it shall have obtained a license for that purpose from the chief of the division of archives, patents, copyrights, and trade-marks of the executive bureau upon order of the secretary of finance and justice in case of banks, savings and loan banks, trust corporations, and banking institutions of all kinds, and upon order of the secretary of commerce and police in case of all other foreign corporations. No order for a license shall be issued by either of said secretaries except upon a statement under oath of the managing agent of the corporation, showing to the satisfaction of the proper secretary that the corporation is solvent and in sound financial condition, and setting forth the resources and liabilities of the corporation within sixty days of the date of presenting the statement, as follows: 1. The name of the corporation; 2. The purpose for which it was organized; 3. The location of its principal or home office; 4. The capital stock of the corporation and the amount thereof actually subscribed and paid into the treasury on the .....; 5. The net assets of the corporation

(Here insert date, month, year.)

over and above all debts, liabilities, obligations, and claims outstanding against it on the .....; 6. The name of an agent residing

(Here insert date, month, year.)

in the Philippine Islands authorized by the corporation to accept service of summons and process in all legal proceedings against the corporation and of all notices affecting the corporation: Provided, however, that the secretary of finance and justice or the secretary of commerce and police, as the case may be, before ordering that a license be issued in the case of any particular corporation, may require further evidence of the solvency and fair dealing of the corporation if in his judgment such further information is essential. Upon filing in the division of archives, patents, copyrights, and trade-marks of the executive bureau the said statement a certified copy of its charter and the order of the secretary of finance and justice or of the secretary of commerce and police, as the case may be, for the issuance of a license, the chief of the said division shall issue to the foreign corporation as directed in the order a license to do business in the Philippine Islands, and for the issuance of said license the chief of the said division shall collect a fee of fifty pesos: Provided, however, that the secretary of finance and justice or secretary of commerce and police, as the case may be, may issue to any foreign commercial corporation transacting business in the Philippine Islands at the time of the passage of this act and continuously in the Philippine Islands for more than three years prior thereto a license to do business in the Philippine Islands without requiring the statement prescribed by this section, but the license to so transact business shall be secured and the fee paid therefor by such corporation.

See Act No. 1659. Foreign corporations may apply for and secure registration of title to lands in the name of the corporation, subject only to the limitations applied or to be applied to domestic corporations. Act. No. 496, sec. 19, as amended by Act No. 1108, sec. 6.

Sec. 69. No foreign corporation or corporation formed, organized, or existing under any laws other than those of the Philippine Islands shall be permitted to transact business in the Philippine Islands or maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in the section immediately preceding. Any officer, director, or agent of the corporation or any person transacting business for any foreign corporation not having the license prescribed shall be punished by imprisonment for not less than six months nor more than two years or by a fine of not less than two hundred pesos nor more than one thousand pesos, or by both such imprisonment and fine in the discretion of the court.

See Act. No. 1659.

Sec. 70. Every foreign corporation and every corporation not formed, organized, or existing under the laws of the Philippine Islands but transacting business in the



islands at the time of the passage of this act shall be allowed seventeen months from its passage in which to secure the license, present the statement, and make the deposits required.

See Act No. 1659.

**Sec. 71.** The secretary of finance and justice or the secretary of commerce and police, as the case may be, by and with the approval of the governor-general, may revoke the license to transact business in the Philippine Islands of any corporation not formed, organized, or existing under the laws of the Philippine Islands, should such secretary and the governor-general find the condition of the corporation to be one of insolvency or that its continuance in business will involve probable loss to those transacting business with it, and after such revocation it shall be unlawful for any such corporation to transact business in the Philippine Islands unless its license is renewed or reissued. In case of revocation of license the attorney-general shall take such proceedings as may be proper to protect creditors and the public.

See Act No. 1659.

**Sec. 72.** Summons and legal process served upon the agent designated to accept service thereof in the statement required to be filed by section sixty-eight of this act shall give jurisdiction to the courts over the corporation filing said statement, and service of notices on such agent shall be as binding upon the corporation which he represents as if made upon the corporation itself.

Should the authority of such agent to accept service of summons and legal process on the corporation or notice to it be revoked, or should such agent become mentally incompetent or otherwise unable to accept service while exercising such authority, it shall be the duty of the corporation to promptly name and designate another agent upon whom service of summons and process in legal proceedings against the corporation and of notices affecting the corporation may be made and to file with the chief of the division of archives, patents, copyrights, and trade-marks of the executive bureau a duly authenticated nomination of such agent.

Should there be no person authorized by the corporation upon whom service of summons, process, and all legal notices may be made, service of summons, process, and legal notices may be made upon the secretary of finance and justice in the case of banks, savings and loan banks, trust corporations, and other banking institutions, and upon the secretary of commerce and police in the case of all other foreign corporations, and such service shall be as effective as if made upon the corporation or upon its duly authorized agent. In case of service for the corporation upon the secretary of finance and justice or secretary of commerce and police, as the case may be, the proper secretary shall register and transmit by mail to the president or the secretary or clerk of the corporation at its home office or principal office a copy, duly certified by him, of the summons, process, or notice. The sending of such copy of the summons, process, or notice shall be a necessary part of the service and shall complete the service. The registry receipt of mailing shall be conclusive evidence of the sending. All costs necessarily incurred by the proper secretary for the making and the mailing and sending of a copy of the summons, process, or notice to the president or the secretary or clerk of the corporation at its home office or principal office shall be paid in advance by the party at whose instance the service is made.

**Sec. 73.** Any foreign corporation or corporation not formed, organized, or existing under the laws of the Philippine Islands and lawfully doing business in the Islands shall be bound by all laws, rules, and regulations applicable to domestic corporations of the same class, save and except such only as provide for the creation, formation, organization, or dissolution of corporations or such as fix the relations, liabilities, responsibilities, or duties of members, stockholders, or officers of corporations to each other or to the corporation: Provided, however, that nothing in this section contained shall be construed or deemed to impair any rights that are secured or protected by the treaty of peace between the United States and Spain, signed at the city of Paris on December tenth, eighteen hundred and ninety-eight.

#### Miscellaneous provisions.

**Sec. 74.** The misnomer of a corporation in any written instrument does not invalidate the instrument if it can be ascertained from it with reasonable certainty what corporation was intended.

**Sec. 75.** Any corporation or sociedad anonima formed, organized, and existing under the laws of the Philippine Islands and lawfully transacting business in the

Philippine Islands on the date of the passage of this act, shall be subject to the provisions hereof so far as such provisions may be applicable and shall be entitled at its option either to continue business as such corporation or to reform and organize under and by virtue of the provisions of this act, transferring all corporate interests to the new corporation which, if a stock corporation, is authorized to issue its shares of stock at par to the stockholders or members of the old corporation according to their interests.

Sec. 76. This act or any part thereof may be amended or repealed at any time by the legislative authority, and any or all corporations created by virtue of this act may be dissolved by legislative enactment. No right or remedy in favor of or accrued against any corporation, its stockholders or officers, nor any liability incurred by any such corporation, its stockholders or officers, shall be removed or impaired either by the subsequent dissolution of said corporation or by any subsequent amendment or repeal of this act or of any part or portion thereof.

Sec. 77. Every corporation whose charter expires by its own limitation or is annulled for forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its capital stock, but not for the purpose of continuing the business for which it was established.

Sec. 78. At any time during said three years said corporation is authorized and empowered to convey all of its property to trustees for the benefit of members, stockholders, creditors, and others interested. From and after any such conveyance by the corporation of its property in trust for the benefit of its members, stockholders, creditors, and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the members, stockholders, creditors, or other persons in interest.

Sec. 79. No private property shall be taken by any corporation under any franchise for any purpose without proper condemnation proceedings and without just compensation paid or tendered therefor, and any authority to take and occupy land shall not authorize the taking, use, or occupation of any land except such as is required for the actual and necessary purposes for which the franchise is granted; and no franchise, privilege, or concession shall be granted to any corporation except under the conditions that it shall be subject to amendment, alteration, or repeal by the congress of the United States, and in case of public-service corporations that the charges made by reason of the exercise of the franchise shall be subject to regulation from time to time by the government of the Philippine Islands; and such corporations shall pay annually to the insular treasurer such percentage of its gross earnings as may be required by general or special laws, and that lands or rights of use and occupation of lands thus granted shall revert to the governments by which they were respectively granted upon the termination of the franchises and concession under which they were granted or upon their revocation or repeal.

Sec. 80. The provisions of this chapter are applicable to every corporation formed or organized under this act unless such corporation is excepted from its operation or unless some special provision is made in chapter II in relation thereto inconsistent with the provisions of this chapter, in which case the special provision shall prevail.

[Secs. 81—190. Relate to non-trading corporations.]

#### Repealing provisions.

Sec. 191. The code of commerce, in so far as it relates to corporations or sociedades anonimas, and all other acts or parts of acts in conflict or inconsistent with this act, are hereby repealed, with the exception of act numbered fifty-two, entitled "An act providing for examinations of banking institutions in the Philippine Islands, and for reports by their officers", as amended, and act numbered six hundred and sixty-seven, entitled "An act prescribing the method of applying to governments of municipalities, except the city of Manila, and of provinces for franchises to construct and operate street railway, electric light and power, and telephone lines, the conditions upon which the same may be granted, certain powers of the grantees of said franchises, and of grantees of similar franchises under special act

of the commission, and for other purposes": Provided, however, that nothing in this act contained shall be deemed to repeal the existing law relating to those classes of associations which are termed sociedades colectivas, sociedades en comandita, and sociedades de cuentas en participacion as to which associations the existing law shall be deemed to be still in force: And provided further, that existing corporations or sociedades anonimas, lawfully organized as such, which elect to continue their business as such sociedades anonimas instead of reforming and reorganizing under and by virtue of the provisions of this act, shall continue to be governed by the laws that were in force prior to the passage of this act in relation to their organization and method of transacting business and to the rights of members thereof as between themselves, but their relations to the public and public officials shall be governed by the provisions of this act.

Sec. 192. This act shall take effect on April first, nineteen hundred and six.

**No. 1659. An Act amending Act numbered fourteen hundred and fifty-nine entitled "The Corporation Law," as amended, by exempting certain Corporations operating under special Franchises granted by the Philippine Commission from Compliance with the Provisions of certain Sections of said Law (May 18, 1907).**

Sec. 1. Any corporation operating at the time of the passage of this act under a special franchise granted by the Philippine Commission is hereby exempted from compliance with the provisions of sections sixty-eight, sixty-nine, seventy, and seventy-one of the corporation law: Provided, however, that the corporation so exempted shall be obliged to name an agent residing in the Philippine Islands authorized by the corporation to accept service of summons and process in all legal proceedings against the corporation and of all notices affecting the corporation and shall file its designation of such agent in the division of archives, patents, copyrights, and trade-marks of the executive bureau, together with a duly authenticated copy of its articles of incorporation, and pay a fee of fifty pesos for the filing of said designation and copy of articles of incorporation, on or before the first day of August, nineteen hundred and seven: And provided further, that any corporation by this section exempted from compliance with sections sixty-eight, sixty-nine, seventy, and seventy-one of the corporation law, as above provided, shall file with the division of archives, patents, copyrights, and trade-marks of the executive bureau a statement of the amount of stocks and bonds actually issued and the cash or property consideration for such issue of stocks or bonds. In case stocks or bonds were issued in consideration of property transferred or conveyed to such corporation, then such statement shall contain a declaration of the fair valuation of such property: And provided further, that all other sections of the corporation law which are applicable to foreign corporations or to corporations not formed or organized under the laws of the Philippine Islands shall be applicable to corporations exempted by this section from compliance with the provisions of sections sixty-eight, sixty-nine, seventy and seventy-one of the said corporation law.

**Porto Rico.**

**Civil Code.**

**Book 1. Title II.**

**Domestic Corporations.**

**Powers of corporations.**

Sec. 32. **Powers of corporations.** Every corporation has power: 1. To have succession by its corporate name in perpetuity, or for the period mentioned in its articles of incorporation; 2. To sue or be sued in any court; 3. To have and use a seal, which it may alter at will; 4. To acquire and to hold in any legal manner and

to transfer such property, both real and personal, as the purposes expressed in the articles of incorporation may require, and to mortgage such property with its franchises: Provided, however, that the power of any corporation organized under this code to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the congress of the United States of May first, nineteen hundred; 5. To appoint the officers and agents required by the business of the corporation and to make them reasonable compensation. 6. To make by-laws as to the number of directors, as to the management, regulation and government of its property and affairs and the transfer of its stock, subject to the provisions of this code; 7. To dissolve, either voluntarily or by operation of law, and in accordance with the provisions of this code; 8. To possess and exercise, subject to the restrictions and liabilities contained in this code and its articles of incorporation, such incidental powers as are necessary or convenient to the attainment of the object or objects set forth in such articles of incorporation: Provided, that the same are not inappropriate to or inconsistent with such articles of incorporation or with the provisions of this code.

**Sec. 33. Powers prohibited.** No corporation formed under this code shall be deemed to possess or shall exercise corporate powers except in accordance with the previous section, nor shall any such corporation have the power to conduct a banking business or that of discounting bills, notes or other evidences of debt, or receiving deposits of money, or buying gold or silver bullion or foreign coins, or of buying or selling bills of exchange, or of issuing bills, notes, or other evidences of debt upon loan or other circulation of money.

**Sec. 34. Revocation of incorporation.** Any corporation formed under the provisions of this code may be dissolved by the legislative assembly of Porto Rico at its pleasure, and the articles of incorporation, or any addition thereto or amendment thereof, shall be subject to alteration, suspension or repeal in the discretion of the legislative assembly. Corporations organized under this code shall be bound by any amendment or repealing act hereafter enacted by legislative assembly. Such amendment or repeal, however, shall not take away or impair any remedy against any such corporation or its officers for any liability which shall have been previously incurred by it or them. This title and all amendments thereto shall be deemed a part of the charter of every corporation formed hereunder, except so far as the same are inappropriate and inapplicable to the object of such corporation.

#### Formation, alteration, and dissolution of corporations.

**Sec. 35. Articles of incorporation.** On executing, acknowledging and filing articles of incorporation, in accordance with the next section of this code, three or more persons of full legal capacity may organize a corporation for any lawful purpose or purposes and any such corporation may conduct a business in Porto Rico and the United States or any foreign countries, and may hold, acquire, mortgage and transfer real or personal property, or maintain one or more offices outside the island of Porto Rico, provided such powers are included in the objects mentioned in the certificate of incorporation: Provided, however, that it shall not be lawful to organize under this chapter any savings bank, building or loan association, insurance company, railroad company, telegraph company, telephone company, canal company, turnpike company, or other company requiring the exercise of the right of eminent domain.

**Sec. 36.** The articles of incorporation must be subscribed by each of the incorporators and must be acknowledged before a notary or other officer authorized to take and certify acknowledgments. They shall set forth: 1. The name of the corporation; but no name shall be assumed already in use by any other corporation, or so nearly similar thereto as to lead to confusion or uncertainty; 2. The location, including town or city, street and number, if there be any, of its principal office in the island of Porto Rico; 3. The period, if any, limited for the duration of the corporation; 4. The object or objects for which the corporation is formed; 5. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars, the number of shares into which the same is divided, and the par value of each share, and the amount of paid in capital with which it shall commence business, which shall not be less than one thousand dollars; 6. The names and post office addresses of the incorporators and the number of shares subscribed for by each and the amount of their subscriptions paid in by each. 7. Any provision

which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the corporation or for creating, defining, limiting and regulating the powers of the corporation directors, or of the stockholders, provided that such provision or provisions shall be consistent with this code.

**Sec. 37. Commencement of corporate existence.** Upon subscribing and acknowledging the articles of incorporation as hereinabove provided and upon filing the same in the office of the secretary of Porto Rico and payment of the filing fees provided by law, and upon the issue by the secretary of Porto Rico, over his seal, of his certificate that the said articles containing the statements required by the foregoing section have been filed in his office, the existence of the corporation named in the said articles of incorporation shall begin, and from and after the date of such filing it shall be and constitute a body-corporate by the name set forth in the said articles, subject, however, to dissolution as in this code elsewhere provided. The articles of incorporation filed in accordance with this code or a copy thereof duly certified by the secretary of Porto Rico, shall be prima facie evidence of the facts therein contained.

**Sec. 38. First meeting.** Within sixty days after the filing of the articles of incorporation as hereinafter provided, the first meeting of the corporation created by the filing of such articles shall be called by a notice subscribed by a majority of the incorporators, designating the time, place, and purpose of the meeting. The said notice shall be served upon all the subscribers to the said articles of incorporation, either personally or by publication of the said notice on two successive weeks in a newspaper of the island of Porto Rico, and by mailing a copy of such notice by registered mail addressed to each subscriber at the post office address mentioned in the articles of incorporation. But if all the incorporators shall, in writing, waive the notice and fix a time and place of meeting no notice or publication shall be required. At the said first meeting, by-laws shall be adopted for the management and regulation of the internal affairs of the corporation and at least three directors shall be chosen for at least the term of one year from the date of said meeting. At least one of the directors so chosen and at least one of every board of directors subsequently chosen must be a resident of the island of Porto Rico.

**Sec. 39. By-laws.** The power to make and alter by-laws shall be in the stockholders; but any corporation may, in the articles of incorporation confer that power upon the directors, provided, however, that the by-laws so made may be altered or repealed by the stockholders.

**Sec. 40. Directors and officers.** The business of every corporation shall be managed by its directors, each of whom must be a shareholder therein. The directors shall not be less than three in number and shall be chosen annually by the stockholders at the time and place provided in the by-laws, and shall hold office for one year, or until others are chosen and have qualified in their stead. In its articles of incorporation, any corporation organized under this code may classify its directors in respect to the time for which they shall severally hold office: Provided, however that no director shall be elected for a shorter period than one year, and none for a longer period than five years, and provided also that the term of office of at least one class of directors shall expire in each year. Every corporation organized under this code must have a president, a secretary, and a treasurer, who shall be chosen either by the directors or the stockholders as the by-laws may direct, and shall hold their offices until others are chosen and have qualified in their stead. The president must be chosen from among the directors. The secretary must be a shareholder and shall be sworn to the faithful discharge of his duties. He shall keep a record of all votes and resolutions of the stockholders and of the directors in a book to be kept for that purpose, and shall perform such other duties as shall be assigned to him. The treasurer shall be a shareholder and shall give a bond in such sum and with such surety or sureties as may be provided by the by-laws for the faithful discharge of his duty. The corporation may have such other officers, agents, and employees as may be prescribed by the by-laws, and they shall perform such duties and shall be chosen in such manner and shall hold their offices for such terms as may be therein prescribed. Any vacancy occurring among the directors or in the office of president, secretary, or treasurer, by reason of death, removal or any other cause, shall be filled in the manner provided for in the by-laws, and in the absence of any such provision, such vacancies shall be filled by the board of directors.

**Sec. 41. Directors' meeting.** If the by-laws or articles of incorporation so provide, the directors of any corporation organized under this code may hold their

meetings and have an office and keep the books of the corporation, except the stock and transfer books, outside of the island of Porto Rico; Provided, however, that every such corporation shall maintain a principal office in the island and have an agent in charge thereof, wherein shall be kept the stock and transfer books for the inspection of all who are authorized to see the same and for the transfer of stock. Upon proper cause shown, any district court of the island may summarily order any or all of the books of the said corporation to be forthwith brought into the island of Porto Rico and kept therein at such place and for such time as may be designated in such order, and the charter of any corporation failing to comply with such order may be declared forfeited by the court making it and it shall thereupon cease to be a corporation and all its directors and officers shall be liable to be punished for contempt of court for disobedience of such order.

**Sec. 42. Meetings; rights of stockholders; votes by proxy.** The articles of incorporation, or the by-laws of every corporation shall determine the time, the manner of calling and conducting all meetings. Absent stockholders may vote thereat by means of written proxies. Each stockholder shall be entitled to one vote for each share owned by him, and in order that any action taken at any meeting of shareholders shall be valid there must be present at such meeting in person, or represented by proxy, a majority of the outstanding shares. Every stockholder shall have a certificate signed by the president and treasurer, certifying the number of shares owned by him in the corporation, which certificate of stock, together with the shares of stock, represented by it, shall be personal property and shall be transferable on the books of the corporation as the by-laws may provide. Whenever any transfer of shares shall be made for collateral security and not absolutely, it shall be so expressed in the entry of the transfer.

**Sec. 42a. Stockholders' meetings. Places where they may be held.** In all cases where it is not otherwise provided by law, the meetings of stockholders of every corporation organized under this code shall be held at its principal office in the island of Porto Rico. Whenever for any reason a legal meeting of the stockholders cannot be otherwise called, three or more stockholders having voting powers may call such meeting by publishing a thirty days' notice of the time, place, and purpose of the meeting in a newspaper published in the island of Porto Rico, and mailing such notice to all stockholders whose post office address is known or can be ascertained. A meeting so called shall be a legal meeting of the corporation and if there shall be no officers present the stockholders may elect officers for the meeting and the secretary of the meeting shall record the proceedings thereof in the book of the minutes of the corporation.

**Sec. 42b. Liabilities of stockholders.** Where the whole capital of a corporation shall not have been paid in, and the portion of the capital which has been paid in shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share as fixed by the charter of the corporation, or such proportion of that sum as shall be necessary to satisfy such debts and obligations. The directors of every corporation may from time to time issue calls for the payment of instalments upon the shares of stock subscribed for, which instalments shall not exceed in total the par value of such stock. Thirty days' notice of such call and of the time and place of payment shall be given to each stockholder, either personally or by registered mail. If the owner of any share shall neglect to pay any instalment of his subscription to capital stock included in any such call for thirty days after the time appointed for payment of the same, the treasurer, upon the order of the board of directors, shall sell at public auction such number of shares of the delinquent owner as will pay all instalments then due from him, with interest, and all necessary incidental charges, and shall transfer the shares sold to the purchaser, who shall be entitled to a certificate therefor, and shall pay over the proceeds to the delinquent owner, less all charges and expenses entered against such delinquent stock on the books of the corporation. Notice of the time and place appointed for such sale and of the sum due on each share shall be given by the treasurer by advertising the same for three successive weeks, once in each week, before the sale, in a newspaper published in the island of Porto Rico, and by sending by registered mail a copy of such notice to the delinquent stockholder at the post office address given in the articles of incorporation or entered on the books of the corporation.

**Sec. 43. Certificates as to paid-in capital.** Upon payment of each instalment of capital stock made subsequently to the filing of the articles of incorporation and of

each instalment of every increase thereof, the president and secretary or treasurer shall make a certificate stating the amount so paid, and whether paid in cash or by the purchase of property, stating also the total amount of capital stock previously paid and reported, which certificate shall be signed and sworn to by them, and they shall, within ten days after such payment, cause the certificate to be filed in the office of the secretary of Porto Rico. If any of the said officers shall neglect or refuse to perform the duty required in this section for thirty days after a written request so to do by a creditor or stockholder of the corporation, they shall be jointly and severally liable for all its debts contracted before the filing of such certificate.

**Sec. 44. Changes in corporation.** Every corporation organized under this code may amend its articles of incorporation by changing the corporate object or objects, changing the name, increasing or decreasing the capital stock, changing the par value and number of shares of its capital stock, changing the location of its principal office in the island of Porto Rico, extend the term of corporate existence limited in the articles of incorporation, or make such other amendment, change, or alteration as may be required, provided that such certificate of amendment, change or alteration shall contain only such provisions as it will be lawful and proper to insert in original articles of incorporation made at the time of making such amendment; and provided also that for filing such amendment to the articles of incorporation the secretary of Porto Rico shall charge the same fees as for filing the original articles. Such amendments, changes, or alterations shall be made in the following manner: The board of directors shall pass a resolution declaring that such change or alteration is advisable and calling a meeting of the stockholders to take action thereon. The meeting shall be held upon such notice, as the by-laws provide, and in the absence of such notice, upon thirty days' notice given personally or by registered mail. If holders of two-thirds of the amount of the capital stock issued shall vote in favor of such amendment, change or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal and acknowledged by a notarial act, and such certificate, together with the assent given in person or by proxy, of stockholders representing two-thirds of the total number of shares issued, shall be filed in the office of the secretary of Porto Rico, and upon the filing of the same, the articles of incorporation shall be deemed to be amended accordingly.

#### Payment of capital stock; dividends.

**Sec. 45. Payment of capital stock.** Except as provided in this section, nothing but money shall be considered as payment of any part of the capital stock of any corporation organized under this code. Any corporation organized under this code may purchase property necessary for its business, or shares in the stock of any other corporation or corporations, owning property necessary for its business, and may issue shares to the amount of the value thereof in payment therefor, and the shares so issued shall be full paid stock and not liable to any further call, neither shall the holder thereof be liable to any further payment under the provisions of this code, and in the absence of actual fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive. In all statements and reports of the corporation to be published or filed, these shares of stock shall be reported in these respects according to the facts and not as being issued for cash paid to the corporation.

**Sec. 46. Payment of dividends.** No corporation shall make dividends except from a surplus of any profits arising from its business, nor divide, withdraw, nor in any way pay to its stockholders any part of its capital stock or reduce its capital stock except in accordance with this code, and in case of any violation of the provisions of this section, the directors under whose administration the same may happen shall be jointly and severally liable at any time within six years after paying such dividend to the corporation and its creditors in the event of its dissolution and insolvency to the full amount of the dividends made or capital stock so divided, withdrawn, paid out, or reduced, with interest on the same from the time such liability accrued: Provided, that any director may exonerate himself from such liability by causing his dissent to be entered at large on the minutes of the directors at the time when such act or resolution was taken or immediately after he shall have received notice of the same. Unless otherwise provided in the original or amended articles of incorporation or in a by-law adopted by a majority of the stockholders, the directors of every corporation formed under this code shall, in January of every



year, after reserving over and above its capital stock paid in as a working capital for such corporation, such sum, if any, as shall have been fixed by the stockholders, declare a dividend among its stockholders, of the whole of its accumulated profits exceeding the amount so reserved and pay the same to such stockholders on demand.

**Elections; transfer books; stockholders' meetings; voting.**

**Sec. 47.** Every corporation organized under this code shall keep at its principal office in the island of Porto Rico transfer books, in which the transfer of shares of stock shall be registered, and stock books, which shall contain the names and addresses of the stockholders and the number of shares held by them, which shall at all times during the usual hours of business be opened to the examination of any stockholders. At least ten days before every election of directors or officers after the first, the directors shall cause the secretary, or other officer designated by them, having charge of such books, to make a full, true, and complete list, in alphabetical order, of all the stockholders, entitled to vote at the ensuing election with the residence of each and the number of shares held by each. This list shall at all times during the usual hours of business be kept open to the examination of any stockholder at the principal office of the corporation in the island of Porto Rico, and any corporate officer having charge of such books or list who shall upon the demand of any stockholder refuse or neglect to submit them to examination shall for each such offense, forfeit the sum of two hundred dollars, to be recovered by an action in any district court, of which one hundred dollars shall be for the use of the people of Porto Rico, and the remainder together with the costs of the suit shall be for the use of him who sues for the same. The books aforesaid shall be the only evidence as to who are the stockholders entitled to examine such books or list and to vote at such election. The board of directors shall produce at the time and place of such election such books and list, there to remain during the election, and the neglect or the refusal of the said directors to produce the same shall render them ineligible to any office at such election. Any stockholder whose name shall be excluded from such a list may, upon proper notice, obtain a summary order from the district court within whose jurisdiction the principal office is situated directing that his name be placed upon the list aforesaid.

**Sec. 48. Election of directors.** All elections of directors shall be by ballot, unless otherwise expressly provided in the articles of incorporation. At every such election the polls shall be opened between the hours of nine o'clock in the morning and five o'clock in the afternoon, and shall close before nine o'clock in the evening, and shall remain open at least one hour, unless all the stockholders are present in person or by proxy and have sooner voted, or unless all the stockholders waive this provision in writing. The persons receiving the greatest number of votes shall be the directors, provided that the majority in interest of all stockholders shall be present in person or by proxy at such election in order to constitute a quorum. Except in the first election of directors, no person who is a candidate for the office of director shall act as judge, inspector or clerk for any election of directors and if any candidate shall so act and be elected, his election shall be void, and the directors shall not appoint such persons as directors within the twelve months next succeeding.

**Sec. 49. Voting.** If it be so provided in the articles of incorporation, as originally filed or as amended, at any election of directors of any corporation organized under this code, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number to be voted, or any two or more of them, as he may see fit, which right when exercised, shall be termed "cumulative voting". No share of stock shall be voted on at any election which has been transferred on the books of the corporation within twenty days next preceding such election. Unless otherwise provided in the articles of incorporation at every election each stockholder, whether resident or non-resident, shall be entitled to one vote in person or by proxy for each share of the capital stock held by him; but no proxy shall be voted on three years after its date. Shares of stock of a corporation belonging to said corporation, commonly known as "treasury stock", shall not be voted upon directly or indirectly. Any person holding stock in any representative or fiduciary capacity may represent the same at all meetings of the corporation, and any stockholder who has pledged his stocks



as collateral security may vote thereon as a stockholder, unless on the transfer to the pledgee on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledge or his proxy may represent the said stock and vote upon it.

**Sec. 50. Time and place of holding elections.** Elections of directors must be held in the principal office of the corporation in the island of Porto Rico. If any election for director of any corporation shall not be held on the day designated by the articles of incorporation the directors shall cause the election to be held as soon thereafter as conveniently may be. The failure to elect directors at the designated time shall not work a forfeiture or dissolution of the corporation. Any district court of the island may summarily order an election to be held upon the application of any stockholder in case of the failure or neglect of the directors to procure an election and may punish the directors for contempt for their failure to obey the order.

**Sec. 51. Complaints concerning elections; judicial investigations.** Any district court of the island of Porto Rico, upon the application of any person who may be aggrieved by any election or any proceeding, act or matter, in or touching the same, may, after reasonable notice to the adverse party or to those who are to be affected thereby, of such application, proceed forthwith and in summary manner to hear the proofs and allegations of the parties and otherwise inquire into the matter of causes of complaints, and thereupon ratify the election complained of, or order a new election, or make such an order and give such relief in the premises as right and justice may require. If the case require it, it may request the attorney-general of Porto Rico to take such action in the premises as may be proper under the law of procedure. Pending any investigation had under this section, the district court may make an order staying any and all proceedings on the part of the directors of the corporation in question, which might tend to prejudice or impair a right or remedy of any party to the controversy.

#### Annual reports of corporations.

**Sec. 52.** Every domestic corporation and every foreign corporation doing business in the island of Porto Rico shall file in the office of the secretary of Porto Rico annually and within the month of July a report authenticated by the signatures of the president and one other officer, or by any two directors of the company, stating: 1. the name of the corporation; 2. the location, town or city, street and number, if number there be, of its principal office in the island of Porto Rico and if a foreign corporation, the name of the agent upon whom process against the corporation may be served; 3. the object or objects of its business; 4. the amount of its authorized capital stock, the amount actually issued and outstanding, and the amount thereof actually paid in; a statement of its existing liabilities; 5. the names and post office addresses of all the directors and officers of the company and the time when the term of office of each expires; 6. the date appointed for the next annual meeting of the stockholders for the election of directors; 7. whether such corporation has kept at its principal office in the island of Porto Rico a transfer book in which the transfers are made, and a stock book containing the names and addresses of the stockholders and the number of shares held by them respectively, open at all times to the examination of stockholders as required by law. Any corporation failing to make such a full report shall forfeit to the island of Porto Rico two hundred dollars to be recovered with costs in an action to be prosecuted by the attorney-general.

#### Dissolution.

**Sec. 53.** Whenever in the judgment of the board of directors it shall be deemed advisable that a corporation organized under this code shall be dissolved, the directors within ten days after the adoption of a resolution to that effect by a majority of them at any meeting called for that purpose, of which meeting each director shall have received at least three days notice, shall cause notice of the adoption of such a resolution to be mailed to each stockholder residing in Porto Rico or in the United States, and also beginning within said ten days cause a like notice to be published in a newspaper of the island of Porto Rico four weeks successively; at least once a week, next preceding the appointment of the same. Any meeting of the stockholders to take action upon a resolution so adopted by the board of directors shall be held between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so named, and may on the day so appointed be adjourned by the consent

of a majority in interest of the stockholders present from time to time for not less than eight days at any one time, of which adjourned meeting the notice in the said newspaper shall be given. If at any such meeting two-thirds in interest of all the stockholders shall consent a dissolution shall take place and shall signify their consent in writing, such consent together with a list of the names and residences of the directors and officers, certified by the president or secretary and treasurer, shall be filed in the office of the secretary of Porto Rico, who, on being satisfied by due proof that the requirements have been complied with, shall issue a certificate that such consent has been filed, and the board of directors shall cause such certificate to be published four weeks successively, at least once a week in a newspaper published in the island of Porto Rico, of an affidavit that said certificate has been so published, the corporation shall be dissolved, and the board of directors shall proceed to liquidate the business and affairs of such corporation. Whenever all the stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary, and the secretary of Porto Rico shall forthwith issue a certificate of dissolution on filing such consent in his office, which certificate shall be published as above provided.

**Sec. 54. Corporate existence pending dissolution.** All corporations, whether they expire through the limitation contained in the articles of incorporation or are annulled by the legislature, or otherwise dissolved shall be continued as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property, and to divide their capital; but not for the purpose of continuing the business for which they were established.

**Sec. 55. Directors as trustees, pending dissolution.** Upon the dissolution in any manner of a corporation, the directors shall be trustees pending the liquidation, with full power to settle the affairs, collect the outstanding debts, sell and convey the moneys and other properties among the stockholders after paying its debts, so far as such moneys and property shall suffice. They shall have power to meet and act under the by-laws of the corporation and under the regulations to be made by a majority of the said trustees to prescribe the terms and conditions of the sale of such property, or may sell all or any part for cash or partly on credit, or take mortgages for part of the purchase price for all or any part of the said property.

**Sec. 56. Powers and liabilities of trustees in liquidation.** The directors constituted trustees as aforesaid shall have power to sue for and recover the aforesaid debts and property by the name of the corporation and shall be suable by the same name, or in their own names or individual capacities for the debts owing by such corporation, and shall be jointly and severally responsible for such debts to the amount of the money and property of the corporation which shall come to their hands or possession as such trustees.

**Sec. 57. Judicial appointment of liquidators.** When any corporation shall be dissolved in any manner whatever, the district court having jurisdiction of the place where its principal office in the island of Porto Rico is situated, on application of any creditor or stockholder, may at any time either continue the directors, trustees as aforesaid, appoint one or more persons to be liquidators of such corporation to take charge of the assets and effects thereof, to collect the debts and property due and belonging to the corporation, with power to prosecute and defend in the name of the corporation, or otherwise, all suits necessary or appropriate for the purpose aforesaid, or to appoint an agent or agents under them, or to do other acts that might be done by such corporation if in being that may be necessary for the final settlement of its unfinished business, and the powers of such trustees or receivers may be continued so long as the courts shall think necessary for such purpose.

**Sec. 58. Distribution of assets by trustees or liquidators.** The said trustees or liquidators shall pay ratably, so far as its assets shall enable them, all the creditors for the corporation who prove their debts in the manner directed by the court or by the law of civil procedure. If any balance remain after the payment of such debts and necessary expense, the same shall be distributed among the stockholders.

**Sec. 59. Pending suit; not affected by dissolution.** Any suit now pending or hereafter to be begun against any corporation which may become dissolved before final judgment, shall not lapse by reason of such dissolution; but no judgment shall be entered in any such action except upon notice to the trustees or liquidators of the corporation.

**Sec. 60. Final decree in liquidation proceedings.** A copy of every judicial decree or judgment in proceedings for liquidation had after the dissolution of a corporation shall be filed by the clerk of the court in the office of the secretary of Porto Rico and a minute thereof shall be made by the secretary on the articles of incorporation and in the index thereof.

#### **Liabilities of directors.**

**Sec. 61. False certificate.** If any certificate made or any public notice given by the officers of any corporation in pursuance of the provisions of this code shall be false in any material representation, all of the directors who shall have signed the same knowing it to be false shall be jointly and severally liable for all the debts of the corporation contracted while they were stockholders or officers thereof.

**Sec. 62. Corporate indebtedness.** No corporation shall incur any indebtedness for any purpose whatever in excess of the paid-up value of its capital stock or of the value of its property and assets. The directors who shall authorize by their votes the incurrence of any such indebtedness shall be jointly and severally liable individually for the amount of such indebtedness, and the said liability shall be enforced in any action brought by any creditor who shall establish therein that judgment has been rendered for his claim and that the liquidated assets of the corporation have been insufficient to pay the same.

**Sec. 63. Fees for incorporation under this code.** For receiving and filing the articles of incorporation of any corporation organized under this code, the secretary of Porto Rico shall charge and collect the sum of fifteen (15) cents on each one thousand (\$1,000) of capital stock, provided, however, that no corporation shall pay a filing fee of less than twenty-five (\$25.00) dollars nor more than five hundred (\$500) dollars for filing its articles of incorporation. For every certificate of increase of capital stock, he shall charge and collect the sum of fifteen (15) cents on each one thousand (\$1,000) dollars of such increase, and the sum so collected shall not in any case be less than twenty-five (\$25.00) dollars and the total amount so paid for filing the original articles of incorporation and for filing the certificate of increase shall not exceed five hundred (\$500) dollars. No fee shall be charged for filing articles of incorporation of any charitable, religious, or educational institution.

**Sec. 64. Repeal.** All laws, acts, royal decrees, general orders, or parts thereof, in conflict with the provisions of this chapter are hereby repealed.

#### **Foreign corporations.**

**Sec. 65.** All corporations or joint stock companies, organized under the laws of any state, or of the United States, or any foreign government, shall, before doing business within this island, file in the office of the secretary, a duly authenticated copy of their charters or articles of incorporation, and also a statement verified by the oath of the president and secretary of said corporation, and attested by a majority of its board of directors, showing: 1. The name of such corporation and the location of its principal office or place of business, without this island; and if it is to have any place of business or principal office within this island, the location thereof; 2. The amount of its capital stock; 3. The amount of its capital stock actually paid in, in money; 4. The amount of its capital stock paid in, in any other way, and in what; 5. The amount of the assets of the corporation and of what the assets consist, with the actual cash value thereof; 6. The liabilities of such corporation and if any of its indebtedness is secured, how secured, and upon what property.

**Sec. 66.** Such corporation or joint stock company shall also file, at the same time, and in the same office, a certificate, under the seal of the corporation, and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the said corporation has consented to be sued in the courts of this island upon all causes of action arising against it in this island, and that service of process may be made against some person, a resident of this island, whose name and place of residence shall be designated in such certificate and such service when so made upon such agent shall be valid service on the corporation or company, and such agent shall reside at the principal place of business of such corporation or company.

**Sec. 67.** The written consent of the person so designated to act as such agent, shall also be filed in a like manner, and such designation shall remain in force until the filing in the same office of a written revocation thereof or of the consent, exe-

cuted in a like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

Sec. 68. If any foreign corporation shall attempt or commence to do business in this island without having first filed said statements, certificates, and consents, required by this code, it shall forfeit to the people of this island the sum of ten dollars for every day it shall so neglect to file the same. It shall be the duty of the attorney-general to sue for and recover, in the name of the island, the penalty above provided, and the same, when so recovered, shall be paid into the treasury for the use of the island.

Sec. 69. Every such corporation shall annually, and within twenty days from the first day of July of each year, make a report, which shall be in the same form and contain the same information as required in the statement mentioned in section 1<sup>1</sup>) of this chapter, which report shall be filed in the office of the secretary.

Sec. 70. Any foreign corporation that has heretofore engaged in business, performed acts, or made contracts in this island, may within ninety days from the date this code goes into effect comply with the provisions hereof, and thereupon all its acts and contracts done and made before this code goes into effect, shall be valid and enforceable, any statute of this island, or any order heretofore enacted or made to the contrary notwithstanding.

Sec. 71. Foreign life insurance companies, not on the assessment plan, are hereby declared to be embraced within the provisions of this act; Provided, that such foreign insurance, surety or building and loan companies as have filed their charters and taken out certificates in accordance with general orders No. 94, series of 1900, of the late military government of Porto Rico shall be relieved from the provisions of this code, and the treasurer of Porto Rico shall transfer to the secretary of Porto Rico, the charters, statements and certificates of such companies filed in accordance with said general orders.

## West Virginia.

### Code, 1906, c. 52. Of Corporations generally.<sup>2)</sup>

Sec. 2207. **General powers.** 1. Every corporation as such shall have succession by its corporate name for the time limited in its charter or by law; and if no time be limited, perpetually. It shall have a common seal, and may renew or alter the same at pleasure. It may sue and be sued, plead and be impleaded; contract and be contracted with, by simple contract or specialty; purchase, hold, use, and grant estate real and personal; appoint officers and agents, prescribe their powers, duties, and liabilities; take bond and security from any of them, and fix and pay their compensation; and make ordinances, by-laws, and regulations for the government of its council, board, officers, and agents, and the management and regulation of its property and business.

Sec. 2208. **Restriction on corporate powers. Violation of laws.** 2. The powers mentioned in the preceding section, or otherwise granted to any corporation, shall be limited by the purposes for which it is incorporated, and no corporation shall engage in transactions or business not proper for those purposes; nor shall corporate powers be exercised in violation of any law of the state.

Sec. 2209. **Corporation for purchase of real estate for profit. Purchase of bonds, etc., or becoming surety or guarantor for other companies.** 3. No corporation shall be incorporated for the sole purpose of purchasing real estate in order to sell the same for profit, nor shall it, except by a vote of its stockholders regularly had, subscribe for or purchase the stock, bonds or other securities of any joint stock company, or become surety or guarantor for the debt or default of such company.

4. [Repealed. Acts, 1901, c. 35.]

[Secs. 2210—2221. Relate to non-trading corporations.]

Sec. 2222. **Expiration or dissolution; disposition of property.** 17. When any corporation shall expire, or be dissolved, or its corporate rights and privileges shall

1) Sec. 52, supra. — 2) As amended and re-enacted. See Acts 1901, c. 35. 1905, c. 41.

have ceased, it may wind up its affairs in the manner prescribed by section fifty-nine of chapter fifty-three of this act.

**Sec. 2223. Process.** 18. In any action brought against a corporation, if it be in the circuit court, process shall be issued as provided in chapter one hundred and twenty-four of this act; or if the action be brought before a justice, process shall be issued as provided in chapter fifty of this act.

**Sec. 2224. Attachment.** 19. Attachments may be served upon a company or corporation, as garnishee, in the manner prescribed by the preceding section, and in chapter one hundred and six of this act.

[Sec. 2225. Relates to process against railroad company.]

**Sec. 2226. Powers in addition to those enumerated.** 21. In addition to the powers enumerated in this chapter, and those expressly or by necessary implication given by any other law, every corporation shall have such powers, and such only, as are necessary or proper to the exercise of the powers so enumerated or given.

**Sec. 2227. Contracts; bonds; debts, etc.; usury.** 22. No corporation shall interpose the defence of usury in any suit or proceeding at law or in chancery; nor shall any bond, note, debt, or contract of a corporation be set aside, impaired, or adjudged invalid by reason of anything contained in the laws prohibiting usury.

**Sec. 2228. Existing corporations; powers, privileges, etc.** 23. Corporations now existing shall continue to exercise and enjoy their powers and privileges according to their respective charters and the laws now in force, and shall continue subject to all the liabilities to which they are now subject; except so far as such powers, privileges, and liabilities are modified or controlled by this act.

[Sec. 2229. Relates to non-trading corporations.]

### **Code, 1906, c. 53. Regulations applicable to Joint Stock Companies, whether incorporated under special Charters or general Law.<sup>1)</sup>**

**Sec. 2230. Definitions: "joint stock company".** 1. The words "joint stock company", include every corporation having a joint stock or capital divided into shares owned by the stockholders respectively.

**Sec. 2231. Same: "by-law".** 2. When the word "by-law" is used in this chapter, it is to be understood as if immediately followed by the words "adopted by the stockholders in general meeting assembled".

**Sec. 2232. Corporations not to be created by special charter. Special privileges not to be granted. Restriction of corporate powers.** 3. No corporation shall hereafter be created by special charter, and no act shall be passed granting special privileges to any joint stock company heretofore or hereafter incorporated under the provisions of chapter fifty-four of this code, or any other general law of this state, and no joint stock company shall be authorized to engage in any business other than that which is proper under its charter; except that a mining, manufacturing, oil, salt, or internal improvement company, may lay out a town not to include more than six hundred and forty acres, at or near their works, and sell lots therein; and any corporation may take real estate, stocks, bonds, and securities, in payment, in whole or in part for any debt bona fide owing to it, or as a security therefor, or may purchase the same if deemed necessary, to secure or obtain payment of any such debt, in whole or in part, and may manage, use, and dispose of what has been so taken or purchased, as a natural person might do; and any corporation may compromise or purchase its own debts, and establish and manage a sinking fund for that purpose, and any manufacturing company may with the assent of the holders of two-thirds of its stock, had by a vote at a stockholders' meeting, subscribe for or purchase the stock, bonds, or securities of any corporation formed for the purpose of manufacturing or producing any articles or material used in the business of such joint stock company, or dealing in any articles or material manufactured or produced by such joint stock company, or constructing a railroad or other work of internal improvement, through or into the county in which the principal place of business of such joint stock company may be, or operating a railroad or other work of internal improvement so constructed, and may, with the like assent, become surety for or guarantee the debts of such corporation, or in any manner aid it in carrying on its business.

<sup>1)</sup> As amended and re-enacted. See Acts, 1882, c. 96, 1901, c. 35, 1903, c. 3.

**Sec. 2233. Annulment of special charters or exclusive privileges. Effect.** 4. All existing charters or grants of special or exclusive privileges under which organizations shall not have taken place, or which shall not have been in operation within two years from the twenty-second day of August, one thousand eight hundred and seventy-two, shall have no validity or effect whatever. Provided, that nothing herein shall prevent the execution of any bona fide contract heretofore lawfully made in relation to any existing charter or grant in this state.

**Sec. 2234. Preservation of rights, powers and privileges to existing companies.** 5. All rights, powers, and privileges heretofore granted by the general assembly of Virginia, or by the legislature of this state to any joint stock company, which are not rendered invalid and of no effect by the preceding section, are hereby preserved to it.

**Sec. 2235. Time within which company must be organized. Abandonment of certificate of incorporation.** 6. When a certificate of incorporation has been or shall hereafter be issued for a joint stock company under a general law, such company must be organized and begin its proper corporate business within one year after the date of such certificate; otherwise, the certificate shall be of no effect, and such corporation shall be ipso facto dissolved. When a certificate of incorporation is issued for a joint stock company under a general law, and the incorporators and other stockholders, or a majority of them, desire to abandon such certificate of incorporation, and not to organize such corporation, such incorporators and stockholders may by signing and acknowledging a statement to such effect, and sending the same, together with the certificate of incorporation, to the secretary of state, abandon such corporation. The provisions of sections fifty-six, fifty-seven, fifty-eight and fifty-nine of chapter fifty-three of the code shall apply to the corporations named in this section so far as they are applicable. The secretary of state shall cancel such certificates of incorporation surrendered to him, and file and preserve them and the foregoing named statements in his office, and aptly note in the index of corporations kept in his office, the fact of the extinction or dissolution of such corporations.

**Sec. 2236. Suspension of corporate business; corporate rights and privileges to cease.** 7. If a joint stock company whether organized under special charter, or general law, suspend its proper corporate business at any time for two years continuously, its corporate rights and privileges shall cease.

**Sec. 2237. Power of legislature to alter, repeal, or amend charter, etc.** 8. Where the legislature has the right to alter or repeal the charter or certificate of incorporation heretofore granted to any joint stock company, or to alter or repeal any law relating to such company, nothing contained in this chapter shall be construed to surrender or impair such right. And the right is hereby reserved to the legislature to alter any charter or certificate of incorporation hereafter granted to a joint stock company, and to alter or repeal any law applicable to such company. But in no case shall such alteration or repeal affect the right of the creditors of the company to have its assets applied to the discharge of its liabilities, or of its stockholders to have the surplus, if any, which may remain after discharging its liabilities and the expenses of winding up its affairs, distributed among themselves in proportion to their respective interests.

**Sec. 2238. Companies subject to chapter; existing companies.** 9. Every joint stock company heretofore organized, and which has commenced its proper corporate business, under special charter or general law, shall remain subject to the laws now in force applicable thereto, unless it accepts the provisions of this chapter, or shall be declared subject thereto, by act of the legislature.

**Sec. 2239. Same; companies previously organized.** 10. Every joint stock company which shall be hereafter organized, or commence its proper corporate business, or which shall accept the provisions of this chapter, or be declared subject thereto by act of the legislature, shall, so far as it is not otherwise expressly provided, have the rights, powers, and privileges, and be subject to the regulations, restrictions, and liabilities specified in this and the preceding chapter.

**Sec. 2240. Corporate names; use of same or similar name by other company.** 11. No joint stock company shall adopt the same name that is being used at the time by another corporation of this state, nor so nearly similar thereto in the opinion of the secretary of state as to lead to confusion or uncertainty; but if any corporation has been published as delinquent for the non-payment of license tax on its

charter, and continues in default for two years after such publication, it shall forfeit the right to use its name, and such name may be assumed by another corporation. In the event such delinquent corporation is reinstated and its charter rehabilitated, after the adoption of its name by another corporation, it shall certify to the secretary of state, in the manner prescribed by law, a new name before such reinstatement shall take effect.

**Sec. 2241. Change of corporate name; certificate.** 12. If the stockholders of a joint company desire to change the name thereof, they may do so in the same manner that they may increase or reduce the number of shares of its capital stock as provided in section twenty-one of chapter fifty-four of the code; and after doing so, such resolution changing such name, certified under the common seal and signature of the president of the corporation, shall be delivered to the secretary of state, who shall issue his certificate, under seal, reciting the resolution and declaring that the corporation is to be thereafter known by the new name so adopted; and such certificate shall be evidence of the change of name therein specified, and the secretary of state shall keep an index in his office, showing the new name and the change from the old name, and the old name showing the change to the new name.

**Sec. 2242. Same; provisions applicable.** 13. The seventeenth, eighteenth, nineteenth, and twentieth sections of chapter fifty-four of this code, shall be applicable to such certificates of change of name.

**Sec. 2243. Same; contracts, suits, etc., not affected.** 14. No contract, right, or liability, previously existing or inchoate, or suit, motion or proceeding then pending, shall be affected by such change of name.

**Sec. 2244. Capital stock; division into equal shares.** 15. The capital stock shall be divided into shares of such amount each as may be prescribed by the charter of incorporation; but every share shall be of the same amount.

**Sec. 2245. Preferred stock, issuance.** 16. The agreement of incorporation and the certificate of incorporation issued by the secretary of state, or the stockholders in general meeting, by a resolution or by-law, may provide for or authorize the issuing of preferred stock on such terms and conditions, and with or without the right to vote in stockholders' meeting, and with such other regulations respecting the preference to be given to such stock over the other stock in relation to future dividends, or otherwise, as the stockholders may deem proper, or as may be named in the agreement of incorporation: provided, that the maximum capital of the corporation shall not be exceeded, and that if the issue be made under authority of a resolution, or by-law, notice shall be first published at least once a week for two weeks successively in some newspaper of general circulation, published in the county wherein the principal office or place of business of the corporation may be, of the intention to offer such resolution or by-law; or if the principal office or place of business of such corporation be not in this state, then such notice may be published at the capital of the state.

**Sec. 2246. Number of stockholders; dissolution for insufficiency.** 17. There shall not be less than five stockholders. If the number be at any time reduced below five, and so remain for six months continuously, the corporation shall be dissolved.

**Sec. 2247. Stock owned by corporation; sale or extinguishment. Voting. Dividends.** 18. If the corporation acquire shares of its own stock, it may either extinguish or sell the same. If extinguished, it shall operate to that extent as a reduction of the amount of its capital stock. No vote shall be given on any stock while owned by the corporation, nor shall any stock while so held be entitled to any dividend.

**Sec. 2248. Ownership of shares.** 19. The person in whose name shares of stock stand on the books of the corporation shall be deemed the owner thereof, so far as the corporation is concerned.

**Sec. 2249. Shares deemed personal estate.** 20. The shares shall be deemed personal estate, and as such shall pass to the legal representative or transferee of the stockholder and be subject to legal process.

**Sec. 2250. Transfer of shares. Transfer books. Closing.** 21. A transfer book shall be kept by the corporation, or by one or more transfer agents appointed by it, in which the shares shall be transferred under such regulations as may be prescribed by the by-laws or vote of the board of directors. Such transfer books may be closed by order of the directors for not exceeding thirty days next preceding any stockholders' meeting.

**Sec. 2251. Same. Payment or security for unpaid instalments.** 22. No share shall be transferred without the consent of the board of directors, until the same is fully paid up, or security given to the satisfaction of the board for the residue remaining unpaid. And where bond and security have been given to the corporation for any sum remaining unpaid upon stock, no transfer shall affect the validity of such bond and security.

**Sec. 2252. Subscription for a sale of shares.** 23. Before a corporation is organized, shares may be disposed of as prescribed by the sixteenth section of chapter fifty-four of this code, or by the charter. After it is organized, the disposal of additional shares to increase the capital stock shall be subject to the order and direction of the board of directors for the time being, so that the maximum capital be not exceeded.

**Sec. 2253. Sale of stock below par.** 24. In no case shall stock be sold or disposed of at less than par, except by a vote of three-fourths of all the stock of the corporation outstanding at the time the vote is taken, and not then until notice of the intention to present a resolution or motion authorizing the sale of stock below par at a stockholders' meeting, shall first be published for at least two successive weeks in some newspaper of general circulation published in the county wherein the principal office of such corporation may be; or if such principal office be not in this state, then in some newspaper of general circulation published at the capital of this state. But nothing herein contained shall be so construed as to prevent any mining or manufacturing corporation subject to the provisions of this chapter, from issuing stock or bonds, and negotiating the sale of same, in payment of real and personal estate for the use of such corporation, and for its other corporate purposes and business, at such price and upon such terms and conditions as may be agreed upon by the owners and the directors or stockholders of such corporation. And any subscriber to the capital stock of any such mining or manufacturing corporation may pay for the same by the transfer and conveyance to such corporation of real or personal property, or both, proper or necessary for the uses and purposes of the corporation, upon such terms as may be mutually agreed upon. All stock so issued shall be fully paid and not liable to any further call or assessment, and, in absence of actual fraud in the transaction, the valuation of the property so purchased shall be conclusive: but it shall be the duty of the corporation to have its minutes or other permanent records to show with reasonable detail the items of the property in payment for which stock or bonds were so issued. Nothing in this section shall be construed as conflicting with section sixty-eight of chapter fifty-four of the code.

**Sec. 2254. Payment at time of subscription.** 25. At least ten per cent. of the par value of each share shall be paid at the time of subscription, and the residue as required by the board of directors or the commissioners having control of the subscription.

**Sec. 2255. Stock not regarded as taken until first instalment is paid.** 26. No stock shall be regarded as taken, or the person, subscribing therefor considered entitled to the same, until the first instalment is paid thereon.

**Sec. 2256. Over subscription.** 27. If more than the amount necessary to make up the maximum capital, or the amount of capital to be disposed of, be at any time subscribed, the subscriptions shall be reduced to the proper amount by deducting the excess from the largest subscription in such manner that no subscription shall be reduced while any one remains larger.

**Sec. 2257. Failure to account for moneys received on subscriptions. Failure to pay instalments. Recovery.** 28. If any person who has received a sum of money on a subscription to the capital stock of a corporation, fail to account for and pay over the same as the board of directors may require, or if any stockholder fail to pay any instalment upon his shares when required by the board, the corporation may recover from him the principal sum due, with interest thereon at the rate of ten per cent. per annum, by motion on ten days' notice, or by action before any justice or court having jurisdiction.

**Sec. 2258. Failure to pay instalments. Sale of stock. Proceeds.** 29. Or, in the case of a stockholder failing to pay any instalment upon his shares when required by the board of directors, the said shares may, by order of the board, after four weeks' notice in a newspaper of general circulation in the county wherein the principal office or place of business of such corporation is situated, be sold at public auction for cash, and be transferred to the purchaser by such person as the board



shall appoint for the purpose. In such case there shall be paid out of the proceeds of the sale the expenses of advertising and selling, and the whole residue remaining unpaid upon said stock; and the surplus, if any, shall be paid to the delinquent stockholder.

**Sec. 2259. Same; absence of bidders; insufficiency of proceeds; recovery of deficiency.** 30. If there be no sale for want of bidders, or if the sale do not produce enough to pay the expenses and the whole residue remaining unpaid on the said stock, the corporation may recover from such stockholder whatever may remain unpaid, with interest at the rate of ten per cent. per annum from the time it was due until payment, by action or motion as aforesaid.

**Sec. 2260. Security for unpaid instalments. Character of security.** 31. A corporation, the stock of which is not fully paid up, may, by by-law, require each stockholder to give security to the satisfaction of its board of directors for the payment, at such times and in such instalments as the board may direct, of the residue remaining unpaid on his stock. In such case, the security may be given by bond, with one or more sureties, or by pledge of other stocks or securities, or by deed of trust or mortgage on real estate, or in any other manner satisfactory to the board and not prohibited by such by-law.

**Sec. 2261. Same; examination of securities, requiring new security.** 32. When security is taken from stockholders for the unpaid residue of their stock, according to the preceding section, the board of directors shall, from time to time examine the said securities to ascertain the sufficiency thereof. And if, in any case, they deem the security insufficient or doubtful, they shall require other security in lieu thereof, and so from time to time thereafter, whenever they find the security insufficient or doubtful.

**Sec. 2262. Same; failure to give new security; recovery of instalments; forfeiture of stock.** 33. If any stockholder being thereto required, according to either of the two preceding sections, fail to give security satisfactory to the board of directors for the unpaid residue of his stock, the corporation may recover from him, by motion on ten days' notice, or by action before any justice or court having jurisdiction, the whole unpaid residue of the stock, with interest thereon at the rate of ten per cent. per annum from the time of such failure until payment; or the board of directors at their option (having first given not less than two weeks' notice to the stockholder of their intention to so do) may declare the stock in regard to which such failure occurred to be forfeited to the corporation.

**Sec. 2263. Same; failure to pay instalment; recovery from security.** 34. If any stockholder, having given security as aforesaid, fail to pay the unpaid residue of his stock, or any instalment thereof, when thereto required by the board of directors, the corporation may recover the amount in arrear, with interest thereon at the rate of ten per cent. per annum from the time of such failure until payment, from the person liable on such security, or any one or more of them, by motion or action as aforesaid; or by the sale or collection of the stocks or securities pledged, or enforcement of the deed of trust or mortgage or other securities given as aforesaid; or in the manner specified in the twenty-ninth and thirtieth sections of this chapter. And if it proceed in any of the modes above mentioned, it shall not be thereby precluded from resorting to the others for the recovery of so much as may remain unpaid.

**Sec. 2264. Certificates of stock; issuance.** 35. The board of directors of any company having capital stock shall cause to be issued, if demanded, to any person appearing on the books of the corporation to be the owner of any shares of its stock, a certificate therefor under the corporate seal, to be signed by the president or vice-president, and such other officer, if any, as the board may direct; which certificate shall show the amount paid on each share.

**Sec. 2265. Same; surrender on transfer of stock.** 36. A stockholder to whom such certificate has been issued shall not be allowed to transfer the shares therein mentioned, or any part thereof, without delivering up the said certificate to the corporation to be canceled, unless the same be lost or destroyed, or sufficient cause be shown to the satisfaction of the board of directors why it cannot be produced.

**Sec. 2266. Same; sale or pledge; Effect.** 37. If any person, for valuable consideration, sell, pledge or otherwise dispose of any shares belonging to him to another, and deliver to him the certificate for such shares, with a power of attorney authorizing the transfer of the same on the books of the corporation, the title of the former

shall vest in the latter so far as may be necessary to effect the sale, pledge or other disposal of the said shares, not only as between the parties themselves, but also as against the creditors of, and subsequent purchaser from the former, but subject nevertheless to the provisions contained in the nineteenth section of this chapter.

**Sec. 2267. Same. Loss. Notice. Publication. Bond. New certificate.** 38. When a person to whom a certificate has been issued, alleges it to have been lost, he shall file in the office of the corporation, first, an affidavit setting forth the time, place and circumstances of the loss, to the best of his knowledge and belief; second, proof of his having advertised the same in a newspaper of general circulation, published near the principal office of the corporation, once a week for four weeks; and third, a bond to the corporation, with one or more sufficient sureties, conditioned to indemnify the corporation and all persons against any loss in consequence of a new certificate being issued in lieu of the former. And thereupon the board of directors shall cause to be issued to him a new certificate, or duplicate of the certificate alleged to be lost.

**Sec. 2268. Dividends on stock. Declaration. Application to debts.** 39. The board may from time to time declare dividends of so much of the net profits as they deem it prudent to divide. If any stockholder be indebted to the corporation, his dividend, or so much thereof as is necessary, may be applied to the payment of the debt, if the same be then due and payable.

**Sec. 2269. Same; unauthorized dividends. Liability.** 40. If the board declare a dividend by which the capital of the corporation shall be diminished, all the members present who do not dissent therefrom and cause said dissent to be entered on the record of their proceedings, shall be jointly and severally liable to the creditors of the corporation for the amount the capital may have been so diminished; and may be decreed against therefor on a bill in equity filed by any creditor; and moreover, every stockholder who has received any such dividend shall be liable to the creditors for the amount of capital so received by him.

**Sec. 2270. Stockholders meetings; when and where held. Notice.** 41. An annual meeting of the stockholders of every corporation shall be held at such times as may be prescribed by the by-laws, or, if there be no such by-laws, then on the fourth Tuesday of January, at eleven o'clock in the forenoon. A general meeting of the stockholders may be called at any time by the board of directors, or by any number of stockholders holding together at least one-tenth of the capital. Notice of the annual or any other general meeting shall be given in such manner as the by-laws may direct; or, if there be no such by-law, by advertising the same once a week for two weeks at least, in some newspaper of general circulation published near the principal office or place of business of the company, if the same be in this state; if such principal office be not in this state, then in some newspaper published at the capital of this state. Such notice shall be signed by the stockholders making the call for the meeting, or, if called by the board of directors, or in pursuance to the by-laws, it shall be signed by the president, vice-president or secretary of the corporation. Such meeting shall be held at the place fixed by the by-laws for such meeting; or, if no place be fixed by the by-laws, then at the principal office of the corporation; provided, that any meeting of the stockholders may be held without the publication of any notice, by agreement in writing of all the stockholders of the corporation. And in any case where notice is required before a meeting of the stockholders can be held for the purpose of organizing, or for other purpose, such notice and the publication thereof may be waived in writing by all the stockholders of the corporation.

**Sec. 2271. Same; quorum. Adjournments.** 42. The number of stockholders, or amount of stock necessary to constitute a quorum at meeting of stockholders, and the mode of transacting business at such meetings, may be prescribed by the by-laws. If there be no such by-law a majority of the stock must be present, in person or by proxy, to constitute a meeting. But if a sufficient number do not attend at the time and place appointed, those who do attend may adjourn from time to time until a meeting is regularly constituted. Every meeting of stockholders may adjourn from time to time till its business is completed.

**Sec. 2272. Same; list of stockholders. Posting.** 43. A list of stockholders, showing the number of shares and votes to which each is entitled, shall, for one month before every annual meeting, be hung up in the most public room at the principal office or place of business of the corporation; but the failure to do so shall not affect the validity of the proceedings of such meeting.

**Sec. 2273. Same. Proxies. Cumulative voting. 44.** In all elections for directors or managers of incorporated companies, whether in other respects governed by this chapter or not, every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner, and on any other question to be determined at any meeting of stockholders, if a vote by stock be demanded upon such question by any stockholder, every stockholder may in person or by proxy, give the following vote on whatever stock he may hold in the same right, that is to say, one vote for every share of stock held in such company.

**Sec. 2274. Death of shareholder giving proxy; effect. 44a. 1.** That in any case where a proxy or other legal written authorization has heretofore been given, executed or delivered, or may hereafter be given, executed or delivered, to another to vote the stock of the maker or giver of such paper in any meeting of the shareholders or stockholders of a corporation or joint stock company, created under the laws of this state, and the holder of such proxy in good faith and without fraud acts as such proxy, or has heretofore acted as such proxy at a meeting of such shareholders or stockholders, and before such meeting the stockholder or shareholder giving such proxy had died, then and in that event all such meetings shall be deemed as valid as if the said shareholder or stockholder giving such proxy had been living at the time of such meeting, unless actual knowledge or notice of the death of such stockholder or shareholder giving such proxy had come or may come to the holder of such proxy before he has acted or may act at such meeting.

[45. Repealed. Acts, 1901, c. 35.]

**Sec. 2275. Reports of directors. Contents. Penalty for failure to make. 46.** The board of directors shall make a report to the stockholders at the annual meeting of the condition of the corporation. The report shall show the property and funds belonging to the corporation and the estimated value thereof; the debts due to it, distinguishing such as are deemed to be good from those considered doubtful or hopeless; the debts and liabilities of the corporation, the amount of the capital paid in and the estimated surplus or deficiency, as the case may be. It shall also state the amount of dividends declared, and losses incurred, or the profits accruing, during the preceding year. And it shall be the duty of the board of directors to make, or cause to have made, a report to the secretary of state within ninety days after the first election, and after any other election or action whereby the officers hereinafter mentioned or the principal office are changed, the names and the postoffice address of the president and the secretary, and the postoffice address (giving the street number, if number there be) of the principal office of the corporation; and the secretary of state shall keep a record in his office, properly indexed, of such officers so reported; any corporation failing to make such report to the secretary of state within the time mentioned, shall be liable to a fine of not less than twenty-five and not more than one hundred dollars, and it shall be the duty of the attorney general, on the report from the secretary of state of such failure on the part of any corporation, to proceed against such delinquent corporation in the circuit court, of the county where the seat of government of the state is established, to fix and collect the same; the amount of said fine to be determined by the court before whom said proceedings are brought.

**Sec. 2276. Investigation and inspection of funds, books, etc. 47.** The property and funds, books, correspondence, and papers of the corporation, in the possession or control of any officer or agent thereof, shall at all times be subject to the investigation of the board of directors, or a committee appointed for the purpose by a general meeting of the stockholders. The minutes of the resolutions and proceedings of the board shall for thirty days before the annual meeting of the stockholders, be open to the inspection of any committee appointed, in writing, by the holder or holders of at least one-twentieth part of the total value of outstanding shares, or by the holder or holders of such number of shares. They shall be produced when required by the stockholders at any general meeting.

48. [Repealed. Acts, 1901, c. 35.]

**Sec. 2277. Board of directors. Election. Meetings. Powers. Quorum. 49.** For every corporation subject to this chapter there shall be a board of directors who

shall have power to do, or cause to be done, all things that are proper to be done by the corporation. The stockholders may in general meeting, by a by-law, prescribe the number of which the board shall consist; but unless a different number be so prescribed there shall be five directors. They may also, by a by-law, prescribe the qualifications of directors; but if it be not otherwise provided, every director must be a resident of this state and a stockholder. The directors shall be elected at the annual meeting of the stockholders, or as soon thereafter as practicable, and shall hold their offices until their successors are elected and qualified. The stockholders in general meeting may remove any director and fill the vacancy; but any vacancy not caused by such removal may be filled by the board. A majority of the board shall constitute a quorum, unless it be otherwise provided in the by-laws; and if the number of the board be reduced at any time so as to interrupt the proper and efficient management of the business of the corporation, a general meeting of the stockholders may be called to elect new directors, or to take such order in the premises as they may deem proper.

**Sec. 2278. President and vice-president.** 50. As soon as may be after the election the board of directors shall choose one of its own body president and another vice-president of the corporation, who shall act as such until their successors are qualified, without ceasing, however, to be members of the board. During the absence of the president and vice-president the board may appoint a president pro tempore who, for the time, shall discharge the official duties of the president. The board of directors shall have full power to determine what is such an absence as will justify the election of a president pro tempore.

**Sec. 2279. Meetings of directors. By-laws.** 51. Subject to the provisions of the by-laws and of the laws of this state, the board shall hold meetings at such times and places and upon such notice as it may prescribe or determine; and the by-laws may provide that any action of a majority, although not at a regularly called meeting, and the record thereof, if assented to in writing by all the other members of the board, shall always be as valid and effective in all respects as if passed by the board in regular meeting assembled.

**Sec. 2280. Records of proceedings of directors. Secretary. Verification of corporate records.** 52. The directors shall cause a record of their proceedings in all directors' meetings to be properly kept by the secretary or assistant secretary of the company, or by a secretary pro tempore. The by-laws or the board of directors may prescribe that such secretary shall be first duly sworn to faithfully and impartially discharge the duties of his office, and that any person acting as such secretary who shall fail to so discharge his duties shall be liable for all damages occasioned to the corporation by such failure. The records shall be verified by the signature of the person acting as secretary and of the chairman of the meeting. No member of the board shall vote on a question in which he is interested otherwise than as a stockholder, except the election of a president or other officer or employe, or be present at the board while the same is being considered; but if his retirement from the board in such case reduce the number present below a quorum, the question may nevertheless be decided by those who remain. On any question the names of those voting each way shall be entered on the record of their proceedings, if any member at the time require it.

**Sec. 2281. Officers and agents. Executive committee. Term of office. Bonds. Compensation.** 53. The board of directors may, subject to the provisions of law and the by-laws, appoint such officers and agents of the corporation as they may deem proper, and also an executive committee from their own number, and may prescribe the duties and compensation of such, but there shall be no compensation for services rendered by the president or any director as such, unless it be allowed or authorized by the stockholders. The officers and agents so appointed shall hold their places during the pleasure of the board, and, if required by the board or by the by-laws, shall give bonds payable to the corporation, in such penalties and with such conditions and security, as the board may approve.

**Sec. 2282. Board of directors to cause books of account to be kept and settled.** 54. The board of directors shall cause regular and correct books of account to be kept, and to be settled and balanced once at least every six months.

**Sec. 2283. Board of directors, by-laws and regulations governing.** 55. The board of directors, in the exercise of their powers, shall be subject to such by-laws

and regulations, not inconsistent with the laws of this state, as the stockholders may pass from time to time in general meeting.

**Sec. 2284. Voluntary dissolution. Procedure.** 56. The stockholders may at any time in general meeting resolve to discontinue the business of the corporation, the majority of the capital stock being represented and voting in favor of such discontinuance; and may divide the property and assets that may remain after paying all debts and liabilities of the corporation. Notice of such resolution shall be immediately given by advertisement in some newspaper of general circulation published near the principal office or place of business of the corporation, once in each week for four successive weeks at least, before any dividend of the capital shall be made; and the said resolution, together with the certificate of the publisher of the newspaper in which the notice was published, shall be certified by the president, under his hand and the common seal of the corporation, to the secretary of state. The secretary shall file the same in his office, and shall issue a certificate, under his hand and the great seal of the state, reciting such resolution and certifying that the said notice was duly published. But the secretary of state shall not issue such certificate until it shall be certified to him by the auditor that such corporation is not delinquent in the payment of the license tax on its charter. The secretary shall certify to the clerk of the house of delegates the name of every such dissolved corporation, stating the date of the dissolution thereof, to be printed and bound with the acts of the legislature. As soon as practicable after such resolution is passed, the stockholders shall cause ample funds and assets to be set apart, either in the hands of trustees or otherwise, to secure the payment of all debts and liabilities of the corporation; and any creditor who supposes his claim not to be sufficiently secured thereby, whether such claim be then due or thereafter to become due, may, on bill in chancery, if sufficient cause therefor be shown, obtain an injunction to prevent the distribution of the capital and a decree against any stockholder for the amount of the capital received by him; and, if necessary or proper in the case, the court may appoint a receiver to take charge of and administer the property and assets of the corporation.

Any corporation desiring to dissolve under the provisions of this section, or of section six of this chapter, shall, before such dissolution becomes effective, pay into the state treasury the amount it may owe to the state for license tax on its charter, including the penalties prescribed in section ninety of chapter thirty-two of the code. If the period of such indebtedness includes a fractional part of a year, it shall pay one-twelfth the yearly rate for each month or fractional part of a month of such fractional part of a year.

**Sec. 2285. Proceedings in equity for dissolution.** 57. If not less than one-third in interest of the stockholders of a corporation desire to wind up its affairs, they may apply by bill in chancery to the circuit court of the county in which the principal office or place of business of such corporation is situated, or if there be no such office or place of business in this state, to the circuit court of the county in which the other stockholders, or any one or more of them reside or are found, or in which the property of such corporation or any part of it may be, setting forth in the bill, the grounds of their application; and the court may thereupon proceed according to the principles and usages of equity to hear the matter, and if sufficient cause therefor be shown, to decree a dissolution of the corporation, and make such orders and decrees, and award such injunctions in the cause as justice and equity may require.

**Sec. 2286. Equity jurisdiction. Receivers.** 58. When a corporation expires, or is dissolved or before its expiration or dissolution, upon sufficient cause being shown therefor, such court as is mentioned in the preceding section, may on application of a creditor or stockholder, appoint one or more persons to be receivers to take charge of and administer its assets; and whether such receiver be appointed or not, may make such orders and decrees and award such injunctions in the cause as justice and equity may require. This section shall apply to corporations, heretofore or hereafter chartered by another state, which may have done business and acquired property or contracted debts in this state, and any of whose creditors or stockholders or their personal representatives reside herein; and the circuit court of any county wherein such creditor, stockholder, or personal representative, may reside, or where such assets or property, or part thereof may be, or where the person owing such debts or having such property in possession may reside, shall afford such relief as is prescribed in this and the next section.

**Sec. 2287. Effect of dissolution or expiration.** 59. When a corporation shall expire or be dissolved, its property and assets shall, under the order and direction of the board of directors then in office, or of the receiver or receivers appointed for the purpose by such circuit court as is mentioned in the fifty-seventh section of this chapter, be subject to the payment of the liabilities of the corporation, and the expenses of winding up its affairs; and the surplus, if any, then remaining, to distribution among the stockholders according to their respective interests. And suits may be brought, continued or defended, the property, real or personal of the corporation be conveyed or transferred under the common seal or otherwise, and all lawful acts be done, in the corporate name, in like manner and with like effect as before such dissolution or expiration; but so far only as shall be necessary or proper for collecting the debts and claims due to the corporation, converting its property and assets into money, prosecuting and protecting its rights, enforcing its liabilities, and paying over and distributing its property and assets, or the proceeds thereof, to those entitled thereto.

**Sec. 2288. Examination by, or report to, legislature.** 60. Every corporation subject to this chapter shall exhibit its books, papers, and property to such agents or committees as the legislature may from time to time appoint to examine the same; and when required by the legislature, shall report thereto a full, fair, and detailed exhibit of its property, liabilities, and condition, verified by the oath of the president, and of the secretary or principal book-keeper.

**Sec. 2289. Process or notice. Service.** 61. Process on, or notice to a corporation, may be served as is provided in section seven of chapter one hundred and twenty-four of this code.

[62. Repealed. Acts, 1901, c. 35.]

[Sec. 2290. Relates to non-trading corporations.]

## **Code, 1906, c. 54. Of the Incorporation of Joint Stock Companies in pursuance of Article Eleven of the Constitution of the State.<sup>1)</sup>**

**Sec. 2291. Laws governing.** 1. Joint stock companies, incorporated under this chapter, shall be subject to the provisions of the fifty-second and fifty-third chapters of the code, so far as the same are applicable.

**Sec. 2292. Purposes of incorporation.** 2. Such companies may be incorporated for the following purposes:

I. For manufacturing, mining, or insuring.

II. For constructing and maintaining lines of magnetic telegraph, telephones, lines of piping or tubing for the transportation of oils or other fluids, and carrying on the business properly pertaining to such works and improvements.

III. For establishing hotels and springs companies, gas works, water works, cemeteries, or building and loan associations, and transacting the business properly pertaining thereto.

IV. For universities, colleges, academies, seminaries, schools or institutes, for the purpose of teaching any branch or branches of useful information or learning, or promoting religion, morality, military science or discipline; or the diffusion of knowledge, including library companies and literary and scientific associations.

V. For agricultural and industrial societies.

VI. For benevolent associations, societies, and orders, including orphan, blind, and lunatic asylums and hospitals, lodges of free and accepted masons, independent order of odd fellows, improved order of red men, sons of temperance, good templars, and knights of pythias, and all other associations, societies, and orders of like character.

VII. For gymnastic purposes.

VIII. For railroads and other works of internal improvement.

IX. For banks of issue and circulation, and of discount and deposit, and for savings institutions.

X. And for any other purpose or business useful to the public for which a firm or co-partnership may be lawfully formed in this state.

<sup>1)</sup> As amended and re-enacted. See Acts, 1881, c. 17, 1901, cc. 35, 82, 83, 84, 108, 109, 1903, cc. 3, 5, 6, 1905, c. 45.

**Sec. 2293. Corporation excepted.** 3. But this chapter shall not be construed to authorize the incorporation of any church or any religious denomination, or of any corporation the object of which is to purchase land and re-sell the same for profit.

**Sec. 2294. Capital stock; division into shares.** 4. The capital stock shall be divided into shares, as prescribed by the fifteenth section of chapter fifty-three of the Code.

**Sec. 2295. Mode of incorporation. Agreement. Contents.** 6. Except where otherwise provided, any number of persons, not fewer than five, desiring to become a corporation for any object or objects designated in the second section, shall sign an agreement in which shall be set forth:

I. The name of the corporation; but no name shall be assumed already in use by another existing corporation of this state, nor so nearly similar thereto in the opinion of the secretary of state as to lead to confusion or uncertainty.

II. The location of its principal place of business and of its chief works, stating as to its principal place of business, the name of the town or city, and street and number, if number there be, the county and state, territory, or country; and as to its chief works (if it have or contemplates having such) if in this state, the district and county in which located; and if not in this state, the state, territory, or country in which they are or will be located.

III. The object or objects for which the corporation is formed.

IV. The amount of the total authorized capital stock of the corporation, the number of shares into which the same is divided, and the par value of each share, and the amount of such authorized capital stock paid in; and if there be more than one class of stock created by the agreement, a description of the different classes, with the terms on which the respective classes of stock are created.

V. The names and postoffice address of the incorporators, and the number of shares subscribed for by each.

VI. The period limited for the duration of the corporation.

VII. The agreement may also contain any provisions which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting, and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of stockholders: provided, such provision be not inconsistent with the law of this state.

If such corporation desire to hold more than ten thousand acres of land in this state, the agreement shall set forth the maximum number of acres it desires to hold. If the corporation thereafter desire to increase such maximum number, it shall proceed in the manner prescribed in section twenty-one of this chapter.

For each and every acre of land in excess of ten thousand acres, and for each acre in excess of the original number in case of increase of maximum number, the secretary of state shall collect at the time of issuing the certificate of incorporation or the certificate of increase, the sum of five cents, which amount he shall report and pay into the state treasury according to section ninety-two of chapter thirty-two of the code.

The parties desiring to become a corporation for any purpose or business designated in the second section, except for railroad purposes, shall file with the secretary of state an agreement to the following effect:

First. The undersigned agree to become a corporation by the name ———.

Second. The principal place of business of said corporation shall be located at (here insert town or city and street and number, if any), in the county of ———, and state of ———; and its chief works shall be located in the (here insert district and county if in this state, and if not in this state, then insert state, territory, or country in which chief works are located).

Third. The object and purposes for which this corporation is formed are as follows: (here insert fully the objects and purposes for which the corporation is formed, the kind and character of business in which it is to engage, and if it desires to hold more real estate, within this state, than ten thousand acres, the number of acres desired).

Fourth. The amount of the total authorized capital stock of said corporation shall be (here insert maximum amount of capital stock), which shall be divided into ——— shares of the par value of ——— dollars each, of which said author-



ized capital the amount of ——— dollars has been paid. (If more than one class of stock is desired, here insert description of the different kinds or classes and the terms and conditions upon which each is to be issued).

Fifth. The names and postoffice addresses of the incorporators and the number of shares of stock subscribed for by each, are as follows: (Here insert names and postoffice addresses of the incorporators and the number of shares subscribed by each).

Sixth. This corporation is to expire on the (insert date of expiration desired, as provided in section eleven).

Seventh. (The incorporators may here insert any provision desired for the regulation of the business and conduct of the affairs of the corporation; and any provision creating, defining, limiting, and regulating the powers thereof, and of the directors and stockholders, or of any class or classes of stockholders, not inconsistent with the laws of this state.)

Given under our hands this ——— day of ———.

(Incorporators sign here.)

**Sec. 2296. Payment on stock by corporator.** 7. No person shall be included as a corporator in any such agreement, by reason of any stock subscribed for by him, unless he has in good faith paid to the person who may have been appointed or agreed upon to receive the same for the intended corporation, at least ten per cent. of the par value of the said stock.

**Sec. 2297. Agreement of incorporation. Acknowledgment. Affidavits of corporators.** 8. The agreement shall be acknowledged by the several corporators before a justice, notary or judge; and such acknowledgments shall be certified by the officers before whom they are made. The affidavits of at least two of the corporators named in the agreement shall be annexed thereto, to the effect that the amount therein stated to have been paid on the capital, has been in good faith paid in, for the purposes and business of the intended corporation, without any intention or understanding that the same shall be withdrawn therefrom before the expiration or dissolution of the corporation.

**Sec. 2298. Same; delivery to secretary of state. Certificate of incorporation.** 9. The agreement, with the acknowledgments and affidavits aforesaid, shall be delivered to the secretary of state, who shall thereupon issue to the said corporators his certificate, under the great seal of the state, to the following effect: "I. A. B., secretary of the state of West Virginia, hereby certify, that an agreement, duly acknowledged, and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following: (here insert). Wherefore the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be from this date, until the ——— day of ———, a corporation by the name and for the purposes set forth in the said agreement. Given under my hand and the great seal of the said state, at ——— this ——— day of ———."

**Sec. 2299. Effect of certificate of incorporation. New agreements.** 10. When a certificate of incorporation shall be issued by the secretary of state, pursuant to this chapter, the corporators named in the agreement recited therein and who have signed the same, and their successors and assigns, shall from the date of the said certificate, until the time designated in the said agreement for the expiration thereof, unless sooner dissolved according to law, be a corporation by the name and for the purpose and business therein specified. And the said certificate of incorporation shall be received as evidence of the existence of the corporation as aforesaid. Any corporation, except railroad companies, may agree to and adopt a new agreement, so as to enlarge or diminish the objects and purposes for which it was incorporated, by signing and acknowledging a new agreement, in all respects as the original agreement was signed and acknowledged. Such new agreement must be signed and acknowledged by the holders of a majority of the stock of the corporation, and a resolution showing that such new agreement has been made, must be spread upon the minutes of the stockholders' meeting, and concurred in by holders of a majority of the stock. When such new agreement is made the same and a certified copy of such resolution, under the hand of the president of the corporation and the seal of the corporation, shall be delivered to the secretary of state, and the secretary of state shall issue his certificate in the form prescribed in the ninth section of this chapter, so far as the same may be found applicable; and from thence such



corporation shall be subject to such new agreement and certificate, and all the provisions of this chapter shall apply to such new certificates and to the corporations receiving the same, in like manner as to original agreements and certificates. And all the provisions of this chapter shall apply to such new certificates and to the corporations receiving the same, in like manner as to original agreements and certificates of incorporation, except as herein otherwise provided.

**Sec. 2300. Duration of corporate existence. Extension.** 11. No corporation formed under this chapter, except life insurance companies, and such as are formed exclusively for the purposes mentioned in the fourth, fifth, sixth, seventh, eighth, and ninth clauses of the second section, shall continue for more than fifty years from the date of its certificate of incorporation. Any corporation, however, formed under the general laws of this state, may extend the time of its continuance beyond that limited in the agreement, for its formation, for such additional time, not exceeding fifty years, as it may desire, in the manner following: The stockholders of such corporation may, at a general or special meeting, adopt a resolution to extend the time of the continuance of such corporation for such time, not exceeding fifty years immediately succeeding the time limited in the original agreement, as may be decided upon by said stockholders, a majority of the stock of such company being represented by the holders thereof, in person or by proxy, and voting for such resolution; but notice of the intention to offer such resolution must have been given by advertisement published once a week for four successive weeks in some newspaper of general circulation published in the county wherein is located the principal office of such corporation, if the same be in this state, and if the principal office be not in this state, then in some newspaper published at the capital of the state: provided, that all of the stockholders of such corporation may in writing, assent to a meeting called for the purpose of extending the duration of such corporation, and may waive in writing the said notice and the publication thereof. When such resolution shall have been so adopted by any corporation, the president thereof shall, under his signature and the common seal of the company, certify the resolution to the secretary of state, and the secretary under his hand and the great seal of the state, shall issue to the company adopting such resolution, a certificate declaring the proposed extension to be authorized by law, which certificate shall be received in all courts and places as evidence of the extension of the existence of such corporation, and of the authority for the same. The provisions of sections seventeen, eighteen, nineteen, and twenty of this chapter shall apply to such certificate.

**Sec. 2301. Acceptance of provisions of chapter by existing corporations. Certificate of incorporation.** 12. The stockholders of any incorporated joint stock company now existing in this state (banks of circulation and companies incorporated for the construction of works of internal improvement excepted) may, by resolution in general meeting, accept the provisions of this and the preceding chapter of the code. And thereupon a copy of the resolution shall be filed with the secretary of state, together with a statement showing the name by which the corporation had theretofore been known, and the name, whether it be the same or a different one, by which it is intended it should be known thereafter; the business to be carried on, the place where such business is to be carried on, and where the principal office is to be kept; the time when the corporation is to expire, subject to the limitation contained in the eleventh section of this chapter; the amount of the whole capital; the amount of the capital paid in; the amount to which it is intended to reserve the privilege of increasing the same, and the par value of each share; which copy and statement shall be certified by the president, under his hand and the common seal of the corporation. And the secretary of state shall thereupon issue a certificate of incorporation, under his hand and the great seal of the state, reciting the said resolution and statement, and declaring the said corporation to be thereafter, until the time mentioned in the said statement for the expiration thereof, a corporation by the name which it is intended it should thereafter bear, and for the purpose and business therein set forth, unless sooner dissolved according to law. Certificates of incorporation issued pursuant to this section shall be received as evidence of the existence of corporations as therein declared; and the said corporations shall no longer be under their former charters, but shall have all the rights, privileges, and powers conferred by this and the fifty-second and fifty-third chapters of the code, and shall be subject to the liabilities, restrictions, and regulations therein prescribed.

**Sec. 2302. Changing par value of shares.** 13. A corporation, at the time when it accepts the provisions of this chapter, may change the par value of its shares as the stockholders thereof, in general meeting, or the board of directors under authority given them by the stockholders, may determine; in which case, the statement to be filed as aforesaid with the secretary of state, shall show the proposed change, and the same shall have effect from the date of the certificate of incorporation.

**Sec. 2303. Continuance of directors and officers in office.** 14. When a certificate of incorporation is issued pursuant to the twelfth section, the board of directors and officers then in office may continue to act in their respective capacities until the next annual meeting of the stockholders, and thereafter until their successors have been chosen and qualified, or until a general meeting, called pursuant to the forty-first section of chapter fifty-three of the code, shall elect a new board or make such order in the matter as they deem right.

**Sec. 2304. First meeting of stockholders. Time. Notice. Place.** 15. When a certificate of incorporation is issued under the ninth section, the incorporators named in the agreement recited therein, or a majority of them, shall appoint the time and place for holding a general meeting of the stockholders to elect a board of directors, make by-laws, and transact any other business which may lawfully be done by the stockholders in general meeting. The time appointed for such meeting shall not be more than six months from the date of the certificate, and at least two weeks notice of such meeting shall be given by advertisement in the manner prescribed in the forty-first section of chapter fifty-three of the code. But if all of the incorporators and stockholders be present when the meeting is held, or if all of such stockholders agree in writing upon a time and place of such meeting, or agree to waive notice of such meeting and the publication thereof, then such meeting may be held without the publication of such notice. The place of such meeting shall be governed by the provisions of the forty-first section of chapter fifty-three of the code, unless changed by mutual consent as provided herein.

**Sec. 2305. Sale of additional stock before organization.** 16. After a certificate of incorporation has been issued pursuant to the ninth section, and before a board of directors have been elected or qualified, additional shares of the capital stock may be disposed of, so that the maximum capital be not exceeded, in such manner, on such terms, at such times and places, and under the superintendence of such persons as the corporation named in the agreement recited in such certificate, or those holding a majority of the shares, may appoint, but subject to the provisions of the twenty-third and the four following sections of chapter fifty-three of the code.

**Sec. 2306. Certificates of incorporation. Record. Publication of abstracts. Distribution.** 17. The secretary of state shall carefully preserve, in his office, the agreements, resolutions, and statements mentioned in the sixth and twelfth sections, and cause to be accurately recorded, in a well bound book, to be kept in his office, all certificates of incorporation, certificates of increase or reduction of capital stock, certificates of change of principal office, certificates of change of name, which he shall issue under this or the preceding chapter of this code. If he omits to record any such certificates, or if any error be discovered in the record thereof, he shall forfeit for every such neglect or default not less than ten nor more than fifty dollars. At the end of every regular session of the legislature, it shall be the duty of said secretary to cause to be printed and bound an accurate abstract of every certificate of incorporation not before reported, which abstract shall show the name of the corporation, the purpose for which the corporation is formed, and the kind of business carried on, its principal office or place of business, when issued and when to expire, the name and residence of each corporator, the amount of capital stock authorized, the amount subscribed and the amount paid in, and the par value of each share. If the said secretary fail therein, he shall forfeit not less than one nor more than fifty dollars. Said secretary shall make free distribution of as many copies of said abstracts of incorporation, as he is now authorized to make of the acts of the legislature.

**Sec. 2307. Fees for recording and for certified copies.** 18. The secretary may charge a fee of four dollars for every such certificate issued by him; and for recording the original, or issuing a certified copy, a fee of fifty cents, or, in lieu thereof, fifteen cents for every hundred words, which fees shall be paid at the time the service is rendered by the person at whose instance it was done.

**Sec. 2308. Copy of certificate. Evidence.** 19. The secretary may at any time issue a copy of such certificate, and such copy, certified under his hand, and also the copy printed as provided in section seventeen of this chapter, shall, as evidence, be equivalent to the original.

**Sec. 2309. Recordation of certificate. Penalty for failure.** 20. The corporation shall cause the said certificate, within three months after it has been issued, or a copy thereof certified as aforesaid, to be delivered for record to the clerk of the county court of the county in which the principal office of such company is kept, and the clerk of the county court shall record the same in his office. If such corporation fail therein, it shall be fined not exceeding one thousand dollars. If the principal office of such corporation be not in the state of West Virginia, then said certificate, or a certified copy thereof, shall be filed and recorded in the county court clerk's office of the county wherein resides the person appointed by said corporation pursuant to the twenty-fourth section of this chapter.

**Sec. 2310. Change of principal office. Increase or reduction in number or value of shares.** 21. Any corporation formed, or which may hereafter be formed, or which has accepted or may accept the provisions of this chapter, may, by resolution at any general or special meeting of the stockholders thereof, change the place of its principal office or its chief works, or make such reduction or increase in the number of shares of its capital stock, or the par value of each share, as may be decided upon by said stockholders, a majority of the stock of such company being represented by the holders thereof at such meeting in person, or by proxy, and voting therefor: provided, that notice be given by advertisement published at least two weeks before such action in some newspaper of general circulation printed in the county wherein the principal office of such corporation is located, if such office be within this state; and if such office be not within this state, then in some newspaper printed at the capital of this state, of the intention to offer such resolution; and provided, further, that said resolution may be adopted without such notice being published, if the meeting at which it be adopted be assented to in writing by all the stockholders of the company at the time or before the meeting is held. Before he shall issue a certificate authorizing an increase of authorized capital stock the secretary of state shall collect from the corporation license tax on the amount of such increase according to the rates prescribed by section eighty-six [one hundred and twenty-six] or eighty-seven [one hundred and twenty-eight] of chapter thirty-two of the code, and pay the same into the state treasury as provided in section ninety-two [one hundred and thirty-nine] of said chapter; but on such increase a resident corporation shall not pay less than five dollars, and a non-resident corporation shall not pay less than ten dollars.

**Sec. 2311. Certificate.** 22. When such change of principal office or increase or reduction shall have been made by any such corporation, the president thereof shall, under his signature and the seal of the corporation, certify the resolution to the secretary of state; and the secretary of state, under his hand and the great seal of the state, shall issue to the corporation so making such change of principal office or increase or reduction, a certificate reciting the resolution and declaring the proposed change of principal office or increase or reduction to be authorized by law; which certificate shall be received in all courts and places as evidence of the change in the number or par value of the shares of the capital stock of such corporation, and of the authority to increase or reduce the same, or of such change of said principal office.

**Sec. 2312. Principal office. Meetings. Notice. Attorneys at other places.** 23. The stockholders or directors of any corporation formed under or accepting the provisions of this chapter, may hold meetings for the transaction of the lawful business of the corporation, including the first general meeting for purposes of organization, and keep the principal office of such corporation either in or out of this state. But no meeting of stockholders shall be held at any other place than the principal office of the corporation, unless the by-laws so provide, without the authority of the stockholders, and no meeting of the stockholders or of the directors, except as provided in the by-laws, or by section fifty-one of chapter fifty-three, of the code, shall be held without reasonable notice. The principal office of the corporation shall be taken and deemed to be at the place fixed by the agreement and the certificate of incorporation, or as located according to the provisions of section twenty-one of this chapter. But notwithstanding the location of the principal office, any corporation may trans-

act business and have an office or offices at any other place, and may own property and carry out the purposes for which it was incorporated at any other place or places.

**Sec. 2313. Resident domestic corporations to appoint agents for service of process or notice. Powers of attorney therefor to be recorded. Failure to comply with requirements. Forfeiture of charter.** 24. Every resident domestic corporation, unless otherwise specifically and expressly provided, shall, within thirty days after its first election of officers, by power of attorney duly executed, appoint some person residing in the county in this state wherein its business is conducted, to accept service on behalf of said corporation, and upon whom service may be had of any process or notice; the said power of attorney shall be recorded in the office of the clerk of the county court of the county in which the attorney resides, and filed and recorded in the office of the secretary of state, and the admission to record of such power of attorney shall be deemed evidence of compliance with the requirements of this section; any corporation failing to comply with said requirements within twelve months from the date of its incorporation, shall by reason of such failure, forfeit its charter to the state, and the provisions of section one hundred and thirty-six of chapter thirty-six, acts of the legislature of one thousand nine hundred and five shall apply thereto.

[Secs. 2314—2321. Relate to non-trading corporations.]

**Sec. 2322. Foreign corporations doing business in state. Conditions precedent. Penalty.** 30. Any corporation duly incorporated by the laws of any other state or territory of the United States or District of Columbia, or of any foreign country may, unless it be otherwise expressly provided, hold property and transact business in this state, upon complying with the provisions of this section and not otherwise. Such corporation so complying shall have the rights, powers, and privileges, and be subject to the same regulations, restrictions, and liabilities, that are conferred and imposed by this and the fifty-second, the fifty-third and the thirty-second chapters of this code, as amended by this act, on corporations chartered under the laws of this state. Every such corporation shall file with the secretary of state a copy of its articles of association or certificate of incorporation. The secretary of state shall issue to every such corporation complying with the provisions of this section, a certificate of the fact of its having done so, which certificate shall be filed and recorded in the office of the clerk of the county court of the county, or one of the counties, in which its business is conducted. Such corporation shall also file in the said clerk's office a copy of its charter, which shall be recorded therein. Every railroad corporation doing business in this state under the provisions of this section, or under charters granted or laws passed by the state of Virginia, or this state, is hereby declared to be, as to its works, property, operations, transactions, and business in this state, a domestic corporation, and shall be so held and treated in all suits and legal proceedings which may be commenced or carried on by or against any such railroad corporation, as well as in all other matters relating to such corporations. No railroad or other corporation which has a charter or any corporate authority from any other state, shall do business in this state as the lessee of the works, property, or franchises of any other corporation or person, or otherwise; or bring or maintain any action, suit, or proceeding in this state, until it shall, in addition to what is hereinbefore required, file in the office of the secretary of state, a writing, duly executed under its corporate seal, accepting the provisions of this section, and agreeing to be governed thereby, and its failure so to do may be pleaded in abatement of any such action, suit or proceeding; but nothing herein contained shall be construed to lessen the liability of any corporation, which may not have complied with the requirements of this section, upon any contract or for any wrong.

Every such corporation which shall do business in this state without having complied with the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred dollars nor more than one thousand dollars for each month its failure so to comply shall continue. Prosecutions under this section shall be in the county in which the seat of government is.

For every certificate issued under this section the secretary of state shall be paid by the corporation a fee of five dollars.

[The remaining sections of this chapter relate to railroads, banks, and other non-trading corporations.]

## Wisconsin.

### Sanborn & Berryman's Stats., 1898, c. 85. Of general Provisions relating to Corporations.

**Sec. 1748. Powers conferred.** Every corporation organized under any general or special law, when no other provision is specially made by law or by its articles of organization, shall have the followings powers: 1. To make all contracts necessary and proper to effect its purposes and conduct its business; 2. To sue and be sued, to appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person; 3. To have a common seal and alter the same at pleasure; 4. To elect or appoint, in such manner as shall be fixed by its by-laws, all necessary officers, agents, and servants, define their duties and obligations, fix their compensation and fill vacancies therein; and to establish branch offices or places of business in this state or elsewhere; 5. To make, amend and repeal by-laws and regulations, not inconsistent with law or its articles of organization, for its own government, for the orderly conducting of its affairs and the management of its property, for determining the manner of calling and conducting its meetings, the manner of appointing and mode of voting by proxy, and the tenure of office of its several officers, and such others as shall be necessary or convenient for the accomplishment of its purposes, and may prescribe suitable penalties for the violation of its by-laws, not exceeding in any one case twenty dollars for any one offense; 6. To take and hold property, both real and personal, to an amount authorized by law, and sell, convey, or otherwise dispose of the same; 7. To mortgage all or any of the rights, privileges, authority, and franchises, special, exclusive or otherwise, which have heretofore been or may hereafter be granted to or conferred upon it by any law of this state, and also its tolls, revenues, and property, both real and personal, to secure the payment of its debts, or to borrow money for the purposes of the corporation, and no other, with the consent of holders of a majority of its stock, or, if not a stock corporation, a majority of its members, and to establish with a like consent, a sinking fund for the payment of its debts.

**Sec. 1749. Quorum of directors and members.** A majority of the directors or trustees of every corporation convened according to the by-laws thereof shall constitute a quorum for the transaction of business. The members owning a majority of the stock in stock corporations and a majority of the members of other corporations shall constitute a quorum at any meeting of such stockholders or members and be capable of transacting any business thereof except when otherwise specially provided by law or by the articles of organization of the corporation.

**Sec. 1750. Office in state; books to be produced; forfeiture; statement of assets.** Every corporation organized under the laws of this state, except such railroad corporations as own or operate railroads in another state as well as in this state in connection with their railroad in this state, shall have its principal office in this state and shall keep in such office its general and principal books of account, including its stock books; and its principal managing officer or superintendent shall reside within this state. Any corporation which, according to the foregoing provisions, is not required to keep its principal office or books of account within this state shall, whenever required to do so by the railroad commissioner, the legislature, or any committee thereof or of either house thereof, or any court of record, produce before such commissioner, legislature, committee, or court its said books of account and stock books, or so many and such parts thereof as may be necessary and as may be required by such commissioner, legislature, committee, or court, or in the discretion of such commissioner, legislature, committee, or court transcripts from such books or such parts thereof as may be required and called for, duly proved and authenticated, may be produced and used as and for the originals; and each such corporation shall designate some office within this state as its principal office and inform the railroad commissioner of such selection and designation, and such corporation shall keep in such office a list of its stockholders, together with a statement of the number of shares of its stock held by each of them respectively, as shown by its books, which list shall be corrected as often as three times in each year, at the times of closing its stock books, if it shall so often close them, and if it shall not so often close them, then such list shall be corrected once at least in each

four months. A failure or refusal to comply with any of the foregoing provisions of this section shall be cause of forfeiture of its franchises. At least once in each year each stock corporation shall make and file in its principal office and keep on file there for the use of its stockholders a statement and abstract of the assets and liabilities of such corporation and of its financial transactions for the previous year, which statement shall be verified by the affidavit of the treasurer or other proper officer of such corporation and shall contain a brief statement of the sources whence its receipts have been received, stated in classes, and a similar statement of its expenditures showing the amount disbursed for each class of objects and purposes.

**Sec. 1750a. Penalty; Failure to file statement.** Any corporation required to make, file, and keep the reports and statements provided for by sec. 1750 of the statutes of 1898, and to allow the inspection of its books and accounts and give the information provided for by sec. 1757 of said statutes, and any officer, manager, agent, director, or trustee of such corporation who shall fail, neglect, or refuse to fully and promptly perform and carry out the duties so imposed shall, in addition to all other existing penalties, forfeit not less than twenty-five nor more than one hundred dollars for each and every failure, neglect, or refusal, to be collected by civil action in favor of any stockholder or creditor thereby aggrieved.

**Sec. 1751. Capital stock, nature and transfer of.** The capital stock of every corporation, divided into shares, shall be deemed personal property, and when certificates thereof are issued such shares may be transferred by indorsement of the owner, his attorney or legal representative and delivery of the certificate. The delivery of a stock certificate of a corporation to a bona fide purchaser or pledgee for value, together with a written transfer of the same signed by the owner of the certificate, his attorney or legal representative shall be a sufficient delivery to transfer the title as against all persons, but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock or to treat the holder of record as the holder in fact until such transfer is recorded upon the books of the corporation or a new certificate is issued to the person to whom it has been so transferred; and every person transferring any such certificates or shares shall remain liable to the creditors of the corporation to the extent and in the manner prescribed in sec. 1756.

**Sec. 1752. Transfer on books, how compelled.** Whenever it shall be made to appear to the circuit court, by affidavit or otherwise, that the secretary or other proper officer of any corporations has, upon proper demand, neglected or refused for two days to transfer on the stock books of the said corporation any stock which it is his duty to transfer such court shall immediately issue an order requiring said secretary to show cause before said court, at some time named in said order not more than ten days from the date thereof, why he should not transfer such stock, and shall in said order direct the manner of its service; and when said order is returnable, unless said secretary shows cause to the satisfaction of the court why such stock should not be transferred, said court shall order such transfer to be made by said secretary at such time and place as to said court shall seem reasonable, and may enforce the performance thereof by proceedings for contempt.

**Sec. 1753. Consideration for stock.** No corporation shall issue any stock or certificate of stock except in consideration of money or of labor or property estimated at its true money value, actually received by it, equal to the par value thereof, nor any bonds or other evidence of indebtedness except for money or for labor or property estimated at its true money value, actually received by it, equal to seventy-five per cent. of the par value thereof, and all stocks and bonds issued contrary to the provisions of law and all fictitious increase of the capital stock of any corporation shall be void.

**[1753. 1—13. Relate to public service corporations.]**

**Sec. 1754. Subscriptions, how called in.** Unless otherwise expressly provided by law or the articles of organization the directors of any corporation may call in the subscriptions to the capital stock by instalments, in such proportion and at such times as they shall think proper, by giving such notice thereof as the by-laws shall prescribe, and may enforce payment thereof by suit in the name of the corporation; or in case any stockholder shall neglect or refuse payment of any such instalment for the space of sixty days after the same shall have become due and payable and after he shall have been notified thereof the stock of such negligent stockholder may be sold by the directors at public auction, giving at least thirty

days' notice in some newspaper published at or nearest to the place, where the business of such corporation is transacted; and the proceeds of such sale shall be first applied in payment of the instalment called for and the expenses attending the sale and the residue be refunded to the owner thereof; but if the proceeds of such sale shall not be sufficient to pay such instalment and the expenses of the sale such delinquent stockholder shall remain liable to the corporation for such deficiency; such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so bought.

**Sec. 1755. Stockholders' liability on reduction of stock; contribution.** Whenever the capital stock of any corporation, shall be diminished by any corporate vote the stockholders thereof shall be liable for the payment of all debts then remaining unpaid, in an action by any such creditor or lawfully appointed receiver or assignee of such corporation, to an amount equal to the sum respectively refunded to them or credited upon their debts for unpaid stock, or both. And also the stockholders voting for such diminution shall be jointly and severally liable to any creditor whose debt shall then remain unpaid to an amount equal to the whole amount refunded to the stockholders or credited upon their debts for unpaid stock, or both; but all stockholders shall be liable for contribution to every stockholder compelled to discharge corporate debts under this section proportionately to the amount so refunded or credited to them respectively.

**Sec. 1756. Stockholder, release from liability.** If any stock shall be transferred which is not fully paid the corporation may, by agreement to be noted on its stock book, discharge the stockholder making such transfer from liability to it for the unpaid part of his stock subscription and accept that of the person to whom the stock is transferred in his place; but the person transferring such stock shall be liable for the amount unpaid thereon, to the then creditors of such corporation and those who may become such within six months after such transfer or to any lawfully appointed receiver or assignee of the corporation for their use.

**Sec. 1757. Stockholder may inspect books; creditor entitled to information.** The books of every corporation containing the stock subscriptions and accounts shall at all reasonable times be open to the inspection of the stockholders; and every creditor of a corporation shall be informed at any time of the amount of capital stock of such corporation subscribed, the amount paid in, who the stockholders are, the number of shares of stock owned by each and the amount unpaid by each stockholder upon the shares owned by him, and if any shares of stock, which were not fully paid for, have been transferred within six months of the time of inquiry, the name of the person who transferred the same and the amount due thereon at the date of such transfer. And the officers of such corporation shall furnish any such creditor correct information thereof. And any officer refusing, when requested so to do, shall be liable for any damage caused there by.

**Sec. 1758. Holder credited payments, not dividends.** In actions by or for the benefit of any such creditor against stockholders to recover what may be due and unpaid on any stock such stockholders shall only be credited with such sums as have been actually paid in in money or its equivalent in value on account of such stock and not with any dividend which may have been declared and applied on such stock.

**Sec. 1759. General and stock record; forfeiture.** Every corporation shall keep a correct and complete record of all its proceedings, including such as relate to the election of its officers, and such record may be kept in any other than the English language when so provided in its articles of organization. Every corporation shall also keep a book containing the names of all stockholders or members since its organization, showing the place of residence, amount of stock held, time of acquiring stock or becoming a member, time of transfer of stock or cessation of membership of each respectively. If any officer, agent, or servant of any corporation shall omit to make any entry in the books or records thereof which it is his duty to make as such officer, agent, or servant he shall forfeit not less than twenty-five nor more than one thousand dollars and be liable for all damages thereby sustained.

**Sec. 1759a. Preferred stock; how issued and regulated.** Any corporation may provide for preferred stock in its original articles of organization, or by amendment thereto adopted by the unanimous vote of the stockholders, and may, in such original articles or by such amendment thereto adopted by the unanimous vote of the stockholders, provide for the payment of dividends on such preferred stock



out of the profits at a specified rate before dividends are paid upon the common stock; for the accumulation of such dividends; for a preference of such preferred stock, not, however, exceeding the par value thereof, over the common stock in the distribution of the corporate assets other than profits; for the redemption of such preferred stock, and for denying or restricting the voting power of such preferred stock. Neither preferred nor common stock shall bear interest. Certificates of preferred stock and common stock shall state, on the face thereof, all privileges accorded to and all restrictions imposed on preferred stock. No change or amendment in relation to such preferred stock shall be made, except by way of amendment to the articles of organization adopted by the unanimous vote of the holders of all the outstanding stock, both preferred and common.

### Meetings of stockholders.

**Sec. 1760. Vote; proxies; shares in trust.** Every stockholder of any corporation shall be entitled to one vote for each share of stock held and owned by him at every meeting of the stockholders and at every election of the officers thereof, and may vote either in person or by proxy at such elections, and by proxy at other meetings when so provided by the by-laws of the corporation; and every executor, administrator, guardian, assignee for creditors, receiver, or trustee shall represent the shares of stock in his hands at all meetings of the stockholders and may vote thereat as a stockholder.

[Sec. 1760 M. Relates to proxies in insurance companies.]

**Sec. 1761. Irregular meeting.** When all the members of any corporation shall be present at any meeting, however notified, and shall sign a written consent to the holding of such meeting on the records thereof, they may transact any business at such meeting which could lawfully be transacted at any meeting of the members of such corporation regularly called and notified.

**Sec. 1762. Election of officers.** When not otherwise specially provided by law or by the by-laws of any corporation, the directors or trustees thereof shall call and order the elections of the officers of such corporation annually; and if they refuse so to do or if from any other cause it shall happen that an election of directors or trustees shall not take place at the annual meeting such corporation shall not be deemed dissolved thereby, but the former officers shall continue to act as such until their successors shall have been elected and qualified, and a special election may be called by the proper officers of such corporation for electing such officers by giving such notice as is required for the annual election; but if such officers shall refuse or neglect to call such special election for ten days after the time fixed for the annual election or if there be no officers authorized to call such special election then any two or more members of such corporation may call a special meeting for the election of officers in the manner prescribed in sec. 1773. When the day fixed for the annual election of officers or other meeting of a corporation shall fall on Sunday or on a legal holiday such election or meeting shall be held on the next succeeding secular day.

### Dissolution.

**Sec. 1763. Dissolution; insolvency; suspension for a year.** Whenever any corporation shall have remained insolvent, or shall have neglected or refused to pay and discharge its notes or other evidences of debt, or shall have suspended its ordinary and lawful business for one whole year, it shall be deemed to have surrendered the rights, privileges, and franchises granted or acquired under any law and shall be adjudged to be dissolved.

**Sec. 1764. Continuance after dissolution.** All corporations whose term of existence shall expire by their own limitation, or which shall be voluntarily dissolved in the manner provided by law or by its articles of association, or shall be annulled for forfeiture or otherwise, shall nevertheless continue to be bodies corporate for three years thereafter for the purpose of prosecuting and defending actions and of enabling them to settle and close up their business, dispose of and convey their property and divide their capital stock, and for no other purpose; and when any corporation shall become so dissolved the directors or managers of the affairs of such corporation at the time of its dissolution, by whatever name they may be known, shall, subject to the power of any court of competent jurisdiction to make, in any case, a different provision, continue to act as such during



said term and shall be deemed the legal administrators of such corporation with full power to settle its affairs, sell or dispose of and convey all its property, both real and personal, collect the outstanding debts, and after paying the debts due and owing by such corporation at the time of its dissolution and the costs of such administration divide the residue of the money and other property among the stockholders or members thereof.

**Sec. 1765. Dividends not to be paid, when; liability.** No dividend shall be paid to any stockholder of any corporation until the capital stock has been fully paid in, and no dividend shall thereafter be declared or paid by the directors of any corporation except out of net profits properly applicable thereto and which shall not in any way impair or diminish the capital; and if any such shall be paid every stockholder receiving the same shall be liable to restore the full amount thereof unless the capital be subsequently made good; and if the directors of any corporation shall pay any such dividend before the capital stock is fully paid in, when the corporation is insolvent or in danger of insolvency, not having reason to believe that there were sufficient net profits properly applicable thereto to pay the same without impairing or diminishing the capital, they shall be jointly and severally liable to the creditors of the corporation at the time of declaring such dividend to the amount of their claims; provided, that any corporation which has invested or may invest its net earnings or income or any part thereof in permanent additions to its property or whose property shall have increased in value, may lawfully declare a dividend payable to stockholders upon its capital either in money or in stock to the extent of the net earnings or income so invested or of the said increase in the value of its property; but the total amount of such dividend shall not exceed the actual cash value of the assets owned by the corporation in excess of its total liabilities, including its capital stock.

**Sec. 1766. Examination by attorney-general.** The attorney-general, whenever required by the governor, shall examine into the affairs and condition of any corporation in this state and report such examination in writing, together with a detailed statement of the facts, to the governor, who shall lay the same before the legislature, and for that purpose the said attorney-general shall have power to administer all necessary oaths and to examine any person in relation to the affairs and condition thereof, and to examine the vaults, books, papers, and documents belonging to such corporation or pertaining to its affairs and condition; and the legislature, or either branch thereof, shall have full power to examine into the affairs and condition of any corporation in this state at all times, and for that purpose any committee appointed by the legislature or either branch thereof may examine any person in relation to the affairs and condition of such corporation, and its vaults, safes, books, papers, and documents, and compel the production of all keys, books, papers, and documents by summary process, to be issued on application to any court of record or any judge thereof, under such rules and regulations as the said court may prescribe.

**Sec. 1767. Use of property.** The property of any corporation organized under any special or general law shall be used only for the purposes prescribed by such law or by its articles of organization in pursuance thereof.

**Sec. 1768. Legislature may restrict powers.** The legislature may restrict time limit or restrict the powers of any corporation organized under any law and, for just cause, annul the same and prescribe such mode as may be necessary for the settlement of its affairs.

**Sec. 1769. Stockholders' liability; wages of employees.** The stockholders of every corporation, other than railroad corporations, shall be personally liable to an amount equal to the stock owned by them respectively in such corporation for all debts which may be due and owing to its clerks, servants, and laborers for services performed for such corporation, but not exceeding six months' service in any one case. Whenever any railway corporation in this state shall be placed by any court of this state in the hands of a receiver, whether upon foreclosure or creditors' bill, it shall be the duty of such receiver to report immediately to the court so appointing him the amount due by said railroad company or by the person or persons who were operating said road at the date of such receiver's appointment to employes and laborers upon said road, and it shall be the duty of said court to order the said receiver to pay out of the first receipts and earnings of said railway, after paying current operating expenses under his administration, the wages of all

employees and laborers which had accrued within six months prior to the appointment of such receiver.

**Sec. 1770. Actions.** Every corporation may maintain an action against any of its members or stockholders for any cause relating to the business of the corporation the same as against any other person; and like actions may be maintained by any member or stockholder against such corporation for any cause of action in his favor against the same.

### Foreign corporations.

**Sec. 1770a. Capital stock of manufacturing corporation.** Every foreign corporation actually engaged in manufacturing within this state shall, within sixty days from the time of making a written request therefor by any resident creditor thereof, and annually thereafter upon a like request, file in the office of the secretary of state a statement showing the capital stock subscribed, the amount thereof actually paid in, the full name of each of its stockholders, and the amount of stock held by each. Such request may be served by mail upon the president, secretary, or other principal officer of said corporation or personally upon any officer or agent thereof who may be within this state. If any corporation shall fail to so file said report it shall forfeit all right to further carry on or transact business in this state and it shall be unlawful for it, or any person for it, to do or transact any business therein, and on such failure any person or agent who shall assume to act for or to transact any business for or on account of said corporation shall forfeit for each and every offense not less than twenty-five dollars nor more than one hundred dollars, which may be sued for in the name of the state by the district attorney of the county where such offense was committed, and the proceeds thereof, after deducting taxable costs, shall be paid into the school fund.

**Sec. 1770b. Corporation defined; filing of articles.** 1. For the purposes of this section, the term "corporation" shall include all corporations, associations, companies, joint stock companies, or express companies organized otherwise than under the laws of this state. 2. No corporation, incorporated or organized otherwise than under the laws of this state, except railroad corporations, corporations or associations created solely for religious or charitable purposes, insurance companies and fraternal or beneficiary corporations, societies, orders, and associations furnishing life or casualty insurance or indemnity upon the mutual or assessment plan, shall transact business or acquire, hold, or dispose of property in this state until such corporation shall have caused to be filed in the office of the secretary of state a copy of its charter, articles of association or incorporation and all amendments thereto duly certified by the secretary of state of the state wherein the corporation was organized. In case the laws of the state wherein the corporation was organized do not require that the charter, articles of association or incorporation be filed in the office of the secretary of the state, then said charter, articles of association or incorporation shall be certified to by the register of deeds or other officer with whom said articles of association or incorporation were filed, with a certificate of the secretary of state attached, certifying that said officer is the proper officer to certify to said articles of association or incorporation. 3. Such corporation, by its president, secretary, treasurer, or general manager, shall make and forward to the secretary of state, with the articles of association or incorporation above provided for, a statement duly sworn to, stating: a) The name of such corporation and the location of its principal office or place of business without this state, and, in case said corporation is to have any place of business or principal office within this state, the location thereof; b) The names and addresses of the officers of said corporation, and the name and address of the agent or manager of said corporation who may represent said corporation in this state; c) The amount of the capital stock paid in money, property, or services; d) The nature of the business to be transacted in this state; e) The proportion of the capital stock of said corporation which is represented in this state by its property located or to be acquired therein and by its business to be transacted therein. In determining said proportion of the capital stock, the property of said corporation located in this state or to be acquired therein and the business transacted within and without the state for one year immediately preceding the filing of its charter or articles of association or incorporation shall be considered and control; f) Shall constitute an appoint the secretary of state its true and lawful attorney upon whom the summons, notices, pleadings,

or process in any action or proceeding against it may be served in respect to any liability arising out of any business, contract, or transaction in this state, and stipulate that service thereof upon the secretary of state, or his assistant, shall be accepted irrevocably as a valid service upon it, and that such appointment and stipulation shall continue in force irrevocably so long as any liability of such corporation remains outstanding in this state. g) When such corporation was authorized to do business in the state wherein incorporated and whether now so authorized; h) That such corporation as a condition of its being permitted to begin or continue doing business within this state, shall comply with all the laws of the state with regard to foreign corporations; 4. Such corporation shall pay into the office of the secretary of state, upon filing its articles of association or incorporation, a fee of twenty-five dollars, and one dollar for every one thousand dollars of its capital stock exceeding twenty-five thousand dollars employed or to be employed in this state, as shown by its sworn statement. 5. All amendments to the articles of association or incorporation made subsequent to the first filing with the secretary of state shall be certified to and filed in the same manner as the articles of association or incorporation, and shall be so filed within thirty days after the same have been filed with the secretary of state or other proper officer of the state wherein the corporation is organized. For filing such amendment the corporation shall pay to the secretary of state a fee of ten dollars except in case of amendment increasing capital stock, in which case the fee for filing shall be in addition to ten dollars, one dollar for each additional one thousand dollars of the increased capital stock to be used in this state, as shown by a sworn statement to be filed with the amendment increasing the capital stock, which said statement shall be signed by the president, secretary, treasurer, or general manager of the corporation, and shall state the proportion of the increased capital stock to be employed in this state. In case of failure to file amendment, as above stated, the corporation shall pay to the secretary of state, on filing said amendment, a penalty of twenty-five dollars. 6. Whenever any change is made in the officers of such corporation, the names and addresses of the officers elected shall be filed with the secretary of state within twenty days after such change. The license of such corporation to do business in this state shall be revoked if it shall remove or make application to remove into any district or circuit court of the United States, any action or proceeding commenced against it by any citizen of Wisconsin upon any claim or cause of action arising within this state; 7. Every foreign corporation which has heretofore filed with the secretary of state a copy of its charter or articles of association or incorporation, or which shall hereafter file the same as required by this act, and every foreign corporation transacting business in this state shall annually, between the first day of January and the first day of March, file with the secretary of state a report sworn to by the president, secretary, treasurer, or general manager of the corporation, as of the first day of January, which shall state: a) The name of such corporation and the location of its principal office or place of business without this state, and its place of business or principal office within this state, if maintained; b) The names and addresses of the officers of said corporation, and the name and address of the agent or manager who may represent said corporation in this state; c) The nature of the business transacted in this state during the year preceding; d) The amount of capital stock paid in money, property, or services; e) The proportion of the capital stock represented in the state of Wisconsin by its property located and business transacted therein during the preceding year. In determining the proportion of capital stock employed in the state, the same shall be computed by taking the gross business in dollars of the corporation in the state and add the same to the full value in dollars of the property of the corporation located in the state. The sum so obtained shall be the numerator of a fraction of which the denominator shall consist of the total gross business in dollars of the corporation, both within and without the state, added to the full value in dollars of the entire property of the corporation, both within and without the state. The fraction so obtained shall represent the proportion of the capital stock represented within the state. The secretary of state may demand, as a condition precedent to the filing of such report, such further figures, information, and statements as he may deem proper in order to determine the accuracy of the reports submitted: the additional information so obtained shall not become a matter of record in the department of state. The corporation shall pay a fee of two dollars for filing such

report. In case said report shows that said corporation employs in this state a proportion of its capital stock in excess of twenty-five thousand dollars, said corporation shall pay to the secretary of state, at the time of the filing of said report, an additional fee of one dollar for each one thousand dollars of such excess, except that the said corporation shall receive a credit for the proportion of its capital stock already paid for in excess of twenty-five thousand dollars; f) That such corporation as a condition of its being permitted to begin or continue doing business within this state, shall comply with all the laws of the state with regard to foreign corporations. In case of failure to file said report in the time above stated, the corporation shall pay to the secretary of state a penalty of twenty-five dollars if the same is filed before May first. In case said report is not filed by May first, or if said corporation shall remove or make application to remove into any district or circuit court of the United States any action or proceeding commenced against it by any citizen of Wisconsin upon any claim or cause of action arising within this state, the license issued to said corporation shall be void, and the secretary of state shall enter such forfeit in the records in his department; 8. Actions may be brought against any corporation in the name by which it is commonly known. All summons, notice, pleading, or process, relating to foreign corporations which have been licensed under the provisions of this chapter, shall be served on the secretary of state in duplicate, one copy to be filed by him in his office, and the second copy to be forwarded by mail forthwith, postage prepaid, and directed to such corporation at its principal place of business in the United States, as shown by the last sworn statement on file in his department, and at the time of serving said papers a fee of two dollars shall be paid to the secretary of state, which said fee shall be taxed as taxable costs in the action; 9. In case any corporation shall not have any articles of incorporation, organization, or association, it shall file in the office of the secretary of state the sworn statement above required of other corporations, and shall include in such statement a statement to the effect that such corporation has no articles of incorporation, organization, or association. Such corporation shall file an annual report, as above required of other corporations, and shall pay the same fees and be subject to the same penalties as such corporations; 10. All foreign corporations and the officers and agents thereof doing business in this state, shall be subjected to all the liabilities and restrictions that are, or may be imposed upon corporations of like character, organized under the laws of this state, and shall have no other or greater powers. Every contract made by or on behalf of any such foreign corporation, affecting the personal liability thereof or relating to property within this state, before it shall have complied with the provisions of this section, shall be wholly void on its behalf and on behalf of its assigns, but shall be enforceable against it or them; 11. The failure to comply with any of the provisions of this section shall, for such violation, subject the corporation or any agent, officer, or person acting for it in this state, to a penalty of five hundred dollars, to be sued for and recovered in the name of the state with the costs of prosecution, by the attorney general or by the district attorney of any county in which it or any of its agents or officers shall be located, or reside, or transact or attempt to transact any business; and such penalty, when recovered, shall be paid into the treasury of the county for the benefit of the school fund. Such penalty shall not attach where a specific penalty is herein provided. 12. The provisions of subsections 3 and 4 relating to statements first to be filed and the fees first to be paid by a corporation of another state, shall not apply to any such corporation now actually doing business in this state under a license heretofore issued.

**Sec. 1770c. License; conditions imposed.** The secretary of state, shall, upon being satisfied that such foreign corporations, joint stock company, express company, has fully complied with the requirements of the preceding section, and all other provisions of law governing such corporations or associations, deliver to such corporation or association, as the case may be, a license (to transact business in this state, which such license) shall continue in force until revoked. And such license shall contain the conditions upon which such foreign corporation or association is permitted to do business in this state.

**Sec. 1770d. Foreign corporations not to transact business unless licensed.** No such foreign corporation or association except such as have heretofore filed with the secretary of state copies of their articles of incorporation or association and have complied with the laws then in force, shall transact any business in this state

without first having paid the license fee prescribed by section 1770b and obtained a license as provided in section 1770c.

**Sec. 1770e. Jurisdiction of circuit courts over.** The circuit courts shall have jurisdiction to give proper remedies to all persons injured or damnified or threatened with injury or damage, by any unlawful or illegal act of any such foreign corporation or association, or by any violation of any provision of law, and for the purpose of enforcing any of the penalties imposed upon such foreign corporations or associations by law.

**Sec. 1770f. Removal to federal court.** Whenever any foreign corporation doing business in this state shall remove or make application to remove into any district or circuit court of the United States any action or proceeding commenced against it by any citizen of this state, upon any claim or cause of action arising within this state, it shall be the duty of the secretary of state, upon such fact being made to appear to him, to revoke the license of such corporation to do business within this state.

**Sec. 1770g. Combinations; trusts.** Any foreign corporation which shall enter into any combination, conspiracy, trust, pool agreement, or contract intended to restrain or prevent competition in the supply or price of any article or commodity in general use in the state, or constituting a subject of trade or commerce therein, or which shall in any manner control the price of any such article or commodity, fix the price thereof, limit or fix the amount or quantity thereof to be manufactured, mined, produced, or sold in this state, or fix any standard or figure by which its price to the public shall be in any manner controlled or established, shall, upon proof thereof, in any court of competent jurisdiction, have its license or authority to do business in this state cancelled and annulled.

**Sec. 1770h. Statement of non-violation.** No foreign corporation shall be authorized to file its charter or articles of incorporation or association with the secretary of state, or be authorized to do business in this state unless it shall at the time of making application therefor, file with the secretary of state an affidavit executed by its president, secretary, or general managing officer stating that such corporation has not violated any of the provisions of section 1770g; and every such corporation shall upon filing its annual statement with the secretary of state, make and attach thereto the affidavit of its president, secretary, or general managing officer, fully stating the facts in regard to the matters specified in section 1770g.

**Sec. 1770i. Ouster.** Upon complaint being made to the attorney general and evidence produced to him which shall satisfy him that any such foreign corporation has violated any of the conditions specified in sections 1770f and 1770g, he shall forthwith bring an action in the name of the state in any circuit court of this state to have the license of such corporation to do business in this state, cancelled and annulled and upon due proof being made thereof to the satisfaction of the court, judgment shall be entered therefor. The provisions of section 1791m shall extend to all proceedings under this and the two foregoing sections.

## C. 86. Of the Organization, Powers, and Dissolution of Corporations.

### Organization and general powers.

**Sec. 1771. Who may organize, and for what purposes.** Three or more adult persons, residents of this state, may form a corporation in the manner provided in this chapter to conduct, pursue, promote, or maintain any one or more of the following named purposes, the same being of a lawful nature:

Academies, and the establishment and maintenance thereof.

Agriculture, and any lawful business or purpose connected therewith.

Art galleries.

Asylums, and the establishment and maintenance thereof.

Benevolent, charitable, or medical institutions.

Boards of trade.

Building of buildings or structures.

Building, constructing, maintaining, and operating private steam logging railroads for use in carrying on and conducting a logging and lumbering business, to be used and operated for the private purpose and exclusive use of such cor-

- poration in such business and for transferring and conveying its logs, timber, lumber, and other materials, supplies and employees, and for no other use or purpose whatsoever; also to acquire any such railroad heretofore constructed and to maintain, use, and operate the same for such purposes.
- Burial of the dead, contribution to the expenses of.
- Cemeteries, and the purchase, holding and regulation thereof.
- Charitable, benevolent, or medical institutions.
- Chemical, mechanical, or manufacturing business.
- Children, the protection and providing homes for.
- Colleges, schools, and academies.
- Commission, storage, forwarding, shipping, or transportation business.
- Contributing to the burial of the dead.
- Debating, declamation, or public speaking and the practice and promotion thereof.
- Docks, and the construction, leasing, or operation thereof.
- Drainage, and for reclaiming wet, submerged, overflowed, and swamp lands and the construction, maintenance, and operation of drains, canals, and ditches.
- Driving logs, timber, and lumber.
- Driving parks, and the establishment, maintenance, and management thereof.
- Elevators, and the construction and leasing thereof.
- Equipment of railroads, and the buying, selling, leasing, or in any manner dealing in railway cars, locomotive engines, or other railway equipment.
- Execution and carrying out of testamentary trusts and powers in cases where the executors or trustees under any will, or one or more thereof, are authorized, requested, or directed by its provisions to organize a corporation for any of the purposes mentioned in this section or elsewhere in their statutes.
- Forwarding, shipping, transportation, commission, or storage business.
- Games, sports, and amusements of a lawful nature.
- Guaranty of title to lands, and the guaranty of owners of real estate and real estate mortgages or other persons interested in real estate from loss by reason of defective titles, liens, or incumbrances.
- Gymnastic or other like exercises, and the development of the bodily powers thereby.
- Heating or lighting or furnishing power or signals by electricity or otherwise.
- High schools, academies, and other like institutions.
- Holding, handling, driving, or booming logs.
- Hospitals, asylums, or other like institutions.
- Hotels, and the purchase, construction, leasing, and management thereof.
- Improvement of logging streams.
- Incumbrance and title guaranty companies as hereinbefore more fully provided for.
- Industrial schools for the teaching and reformation of children lawfully committed thereto.
- Inventions, and the encouragement or aiding of inventors and patentees.
- Leasing or letting of buildings, structures, docks, warehouses, elevators, or hotels.
- Libraries and other like institutions.
- Lighting by gas, electricity, or other means.
- Loaning money on security or otherwise.
- Logging railroad companies as hereinbefore more particularly provided for.
- Lumbering, logging, and other like business.
- Lyceums and other like institutions.
- Manufacture and sale of gas, electric, or other light.
- Manufacturing, mercantile, and other like purposes, and the locating, building, encouraging, and establishing manufactories and manufacturing establishments in cities and towns in this state.
- Mechanical purposes.
- Medicinal or medical purposes.
- Mercantile purposes.
- Mining, smelting, quarrying, and other like business.
- Musical purposes and the cultivation and practice of music.
- Mutual support and maintenance of the members of the corporation, their families or kindred in case of sickness, misfortune, poverty, or death.
- Orphans, the protection of and providing homes for.
- Personal property, the buying, selling, exchanging, and dealing in all kinds thereof.

Power, furnishing of.

Private steam logging railroad companies as herein more particularly provided for.

Producing, mining, smelting, and like purposes.

Quarrying.

Real property, and the buying, selling, exchanging, and dealing in all kinds thereof.

Renting and leasing buildings or structures of any kind and the building, selling, and dealing therein.

Rivers and streams, the improvement thereof for the purpose of log driving.

Schools, academies, and like institutions.

Scientific, literary, artistic, and other like purposes.

Seminaries, schools, colleges and other like institutions.

Shipping, forwarding, and transportation business.

Signals, furnishing of, by electricity or otherwise.

Sharpshooting and practice and competition therein.

Smelting, mining, producing, and like purposes.

Storage, commission, and like business.

Storing and sorting logs and timber.

Streams and rivers, the improvement thereof for logging purposes.

Telegraphing, and the construction and management of telegraph lines or business of any kind.

Telephone business, and the construction, maintenance, and operation of telephones and telephone lines.

Theaters, the construction, maintenance thereof and the business of conducting them.

Title insurance, as hereinbefore more particularly provided for.

Trading or mercantile purposes.

Transportation, shipping, or forwarding.

Universities, schools or colleges.

Warehouses, and constructing, leasing, and operating the same.

Waterworks, and construction, operation, and maintenance thereof.

Or for any lawful business or purpose whatever, whether similar to the purposes herein mentioned or not, except the business of banking, insurance (other than title insurance), building or operating public railroads or plank or turnpike roads, or other cases otherwise specially provided for. Any such corporation may be formed to have a capital stock divisible into shares or without any capital stock upon such plan as may be agreed upon.

**Sec. 1771a. Executors or trustees may organize, when.** The executors or trustees under any will or one or more of such executors or trustees who are authorized, requested, or directed by the provisions of any will to organize a corporation for any of the purposes mentioned in this chapter may, individually or as executors or trustees, or together with the legatees mentioned in such will, or one or more of such executors, trustees, or legatees, associating with him or them such other persons as may be necessary for that purpose, sign, execute, verify, and acknowledge articles of incorporation or association under the provisions of this chapter for the purpose of carrying out the intentions of the testator as expressed in his will, and organizing such corporation, and in such case may transfer and convey to such corporation any property of the testator mentioned and referred to in such will and authorized or required to be used for such purpose, and said executors, trustees, or legatees, or two or more of them, may subscribe to the capital stock of such corporation to the amount of the value of the property mentioned or referred to in such will, and such executors or trustees may convey such property to such corporation in payment of the stock so issued and subscribed without application to or authority from any court.

**Sec. 1772. Articles, contents, verification, filing, fee.** In order to form such a corporation the persons desiring so to do shall make, sign, and acknowledge written articles containing: 1. A declaration that they associate for the purpose of forming a corporation under these statutes, and of the business or purposes thereof; 2. The name and location of such corporation: But such name shall not contain the names of individuals in the manner in which they are ordinarily used in partnership or business names, and shall be such as to distinguish it from any other corporation organized under the laws of this state. In case of the reorganization of a corporation the name of the old corporation may be used. No corporate name shall be held illegal because

of the omission of the word "limited". The location of such corporation in some city, village, or town in the state; 3. The capital stock, if any, the number of shares and the amount of each share; 4. The designation of general officers and the number of directors, which shall not be less than three; and the directors may be required to be classified into three classes so that one-third shall hold their offices for one year, one-third for two, and one-third for three years; in which case all directors elected subsequent to the first shall hold their offices for three years except when elected or appointed to fill vacancies; 5. The principal duties of the several general officers respectively; 6. The method and conditions upon which members shall be accepted, discharged, or expelled; and, in stock corporations, persons holding stock, according to the regulations of the corporation, and they only, shall be members; 7. Such other provisions or articles, if any not inconsistent with law, as they may deem proper to be therein inserted for the interests of such corporation or the accomplishment of the purposes thereof, including, if desired, the duration of its existence. In case the corporation is formed without capital stock the articles shall fix the time and place for the first meeting for the election of officers, and the signers of such articles shall give notice thereof, to the members in the manner provided in the next section. Such original articles or a true copy thereof, verified as such by the affidavits of two of the signers thereof, shall be filed with the secretary of state. A like verified copy and certificate of the secretary of state showing the date when such articles were filed and accepted by the secretary of state within thirty days of such filing and acceptance, shall be recorded by the register of deeds of the county in which such corporation is located, and no corporation shall, until such articles be left for record, have legal existence. The register of deeds shall forthwith transmit to the secretary of state a certificate stating the time when such copy was recorded and shall be entitled to a fee of twenty-five cents therefor to be paid by the person presenting such papers for record. Upon the receipt of such certificate the secretary of state shall issue a certificate of incorporation. For filing the articles of incorporation of corporations for the manufacture of beet sugar, or of butter, cheese or other dairy products, or of corporations organized for the business of preparing for market, storing, or selling products of the farms of members of such corporation, there shall be paid to the secretary of state ten dollars and for the filing an amendment to such articles, five dollars; for filing in his office the articles of any other corporation, except as is otherwise provided in these statutes, the corporation shall pay twenty-five dollars if the capital stock of the corporation is fixed therein at twenty-five thousand dollars or less, and one dollar for each additional one thousand dollars of capital stock; and every other corporation organized and doing business under the laws of this state shall pay a fee of ten dollars for filing any amendment to its articles other than for the purpose of increasing its capital stock; and for filing an amendment increasing its capital stock shall pay, in addition to said fee of ten dollars, one dollar for each one thousand dollars of increase; provided that no fee shall be required from any corporation organized without capital stock or organized exclusively for educational, benevolent, charitable, or reformatory purposes, the articles of which provide that no dividend or pecuniary profits shall be declared to the members thereof. [8. Relates to water reservoir corporations.]

[Sec. 1772b. Relates to the curing of defects in the organization of corporations established under Laws, 1872, c. 146.]

**Sec. 1773. Temporary control before organization; liability of promoters; abandonment of organization.** Until the directors or trustees shall be elected the signers of the articles of organization shall have direction of the affairs of the corporation and make such rules as may be necessary for perfecting its organization, accepting members, or regulating the subscription of the capital stock. In stock corporations the first meeting may be held at any time after one-half the capital stock shall have been subscribed; and may be called by any two signers of the articles, at such time and place as they shall appoint, by giving ten days' personal notice thereof (in writing to each subscriber of stock or by publishing notice thereof) for at least two weeks before such meeting in some newspaper published at or nearest to the designated place of location of the corporation; or such meeting may be held without previous notice if all the subscribers for stock be present in person or by duly authorized attorney. No such corporation shall transact business with any others than its members until at least one-half of its capital stock shall have been duly subscribed and at least twenty per cent. thereof actually



paid in; and if any obligation shall be contracted in violation hereof, the corporation offending shall have no right of action thereon; but the signer or signers of the articles and the subscriber or subscribers for stock transacting such business or authorizing the same, or having knowledge thereof, consenting to the incurring of any debt or liability, as well as the stockholders then existing, shall be personally liable upon the same. The signers of the articles of organization may abandon the organization and revoke the articles at any time before fifty per cent. of the stock has been subscribed and twenty per cent. thereof paid in by signing and acknowledging duplicate, written agreements revoking the original articles of organization and forwarding same to the secretary of state, one agreement to be filed by him and the other agreement to be returned with certificate of the secretary of state attached showing the date when such agreement was filed and accepted by the secretary of state, to be recorded by the register of deeds of the county in which such corporation is located; and the register of deeds shall note on the margin of the record of the articles of incorporation, the volume and page where such agreement is recorded. The register of deeds shall forthwith transmit to the secretary of state a certificate stating the time when such agreement was recorded and shall be entitled to a fee of twenty-five cents therefor to be paid by the person presenting such agreement for record provided, that the abandonment of the organization or the revocation of the articles in pursuance hereof shall not relieve such corporation or any signer or subscriber for stock of any stockholder then existing from any liability hereby created.

**Sec. 1774. Articles how amended; amendments to be filed and recorded; notice of change of name.** Any corporation organized under this chapter, may at any meeting of its members by a vote of at least the owners of two-thirds of all the stock then outstanding, in case of stock corporations, or at least one-half of the members of the corporation without stock, unless a greater vote shall be required in its articles amend its articles of organization so as to modify or enlarge its business or purposes, change its name or location, increase or diminish its capital stock, change its officers, or its directors or provide anything which might have been originally provided in such articles; but no corporation without stock shall change substantially the original purposes of its organization. Such amendments shall be adopted only in accordance with the articles of organization, if a mode of amending the same shall have been therein prescribed. When adopted, duplicate copies of such amendment, with a certificate thereto affixed, signed by the president and secretary, or if none, the correspondent officers, and sealed with the corporate seal, if there be any, stating the fact and date of adoption of such amendment, and, if a stock corporation the total number of shares voting in favor of such amendment, and if a corporation organized without capital stock, the total number of members and the total vote in favor of such amendment, and that such copy is a true copy of the original, shall be forwarded to the secretary of state, one copy to be filed by him, and the other copy to be returned with certificate of the secretary of state attached, showing the date when such amendment was filed and accepted by the secretary of state, which said copy shall be recorded by the register of deeds of the county in which such corporation is located, within thirty days after filing with the secretary of state, and in case of failure so to do, such officers shall forfeit twenty-five dollars, and the register of deeds shall note on the margin of the record of the original articles, the volume and page where such amendment is recorded, and no amendment shall be of effect until so recorded, and such amendment shall be void until so filed and recorded. The register of deeds shall forthwith transmit to the secretary of state a certificate stating the time when such amendment was recorded and shall be entitled to a fee of twenty-five cents therefor, to be paid by the person presenting such amendment for record. Upon receipt of such certificate the secretary of state shall issue a certificate of amendment. Whenever the corporate name shall be changed the secretary shall publish a notice thereof in a newspaper published at or nearest to the place of location of such corporation for three weeks, and if he shall fail for two months so to do shall forfeit twenty-five dollars. No change of location of any such corporation, if beyond the limits of the county, shall be valid until the articles of organization and all amendments shall have been recorded in the office of the register of deeds of the county to which the same shall be changed.

**Sec. 1774a. Annual reports, date of filing; forfeiture for failure to file.** Every corporation for profit, organized under the provisions of this chapter, shall annually,

\* \* \* between the first day of January and the first day of March, file with the secretary of state, a report sworn to by the president, secretary, treasurer, or general manager, or if the corporation is in the hands of assignee or receiver, by such assignee or receiver, as of the first day of January preceding, which shall state: 1. The name of such corporation and location, giving street and number; 2. The name and address of the officers and directors of such corporation, giving street and number; 3. The amount of authorized capital stock; 4. The amount of capital stock actually paid in money, property, and services; 5. Whether such corporation was engaged in active business during preceding year; 6. Nature of business transacted during preceding year; 7. In what states such corporation is licensed to transact business as a foreign corporation.

In case such corporation fails to file its report, as above set forth, it shall be allowed to file such report prior to June first on payment to the secretary of state of a forfeit of ten dollars. In case said report is not filed June first, the secretary of state shall cause to be published once a week for three successive weeks a notice of such failure, in a newspaper published at or near the location of said corporation, as shown by the records of his department; and the register of deeds of each county shall post in his office a list of the corporations located in such county failing to so report. Such corporation shall be allowed to file its said annual report prior to January first on payment of the forfeit, as above set forth, and on payment of the costs of publication. In case said report is not filed by said January first, the corporate rights and privileges granted to such corporation shall be forfeited and the secretary of state shall enter such forfeiture on the records of his department.

The cost of publishing the notice above set forth shall be paid out of the state treasury, and shall be at the same rate as legal notices.

The secretary of state shall during the month of December of each year forward to every corporation required to make an annual report under the provisions of this chapter, blanks therefor.

Whenever any change is made in the officers of such corporation, the names and addresses of the officers elected shall be filed with the secretary of state within twenty days after such change. No forfeiture shall be declared under this section prior to the first day of March, 1907.

The failure to file such report in the time specified herein and proof of publication of the notice herein provided, shall be sufficient evidence on which the secretary of state is authorized to declare the forfeiture of corporate rights and privileges herein provided. This act shall apply to forfeitures entered March 1st, 1907.

The secretary of state may rescind the forfeiture provided in this section on presentation of an affidavit signed by the president and secretary of a corporation to the effect that such corporation has not suspended its ordinary and lawful business since its organization or since the date of forfeiture; or that the corporation at the time the forfeiture was declared held title or transferable interests in real estate. The secretary of state may demand such other and further proof as he may deem necessary. For rescinding such forfeiture there shall be paid the secretary of state a fee of twenty-five dollars.

**Sec. 1775. General powers; holding stock in other corporations.** Every such corporation, when so organized, shall be a body corporate by the name designated in its articles, and shall have the powers of a corporation conferred by these statutes necessary or proper to conduct the business or accomplish the purposes prescribed by its articles, but no other or greater, and may take by gift, devise, purchase, or otherwise, and manage and hold, and may, by a vote of a majority of the stock given at any regular meeting or at any special meeting duly called for the purpose, sell and convey or authorize to be conveyed all or any portion of the property owned by it, whether real, personal or mixed; and may, by a similar vote, mortgage or lease any such property whenever it shall be necessary for its business purposes or the protection or benefit of its property held or used for the corporate business, however the same may have been acquired. But no such corporation shall take or hold stock in any other corporation except upon and with the assent of the holders of three-fourths of the capital stock of both the corporation proposing to take such stock and the corporation in which it is proposed to be taken. [The balance of this section relates to special provisions regarding logging, lumbering, mining, smelting, quarrying, street railway, and electric companies and corporations for encouraging and establishing manufacturing establishments.]

**Sec. 1775a. May acquire rights of persons.** Corporations may take and acquire by lease, purchase, sale, conveyance, or assignment and thereafter own, hold, and enjoy any right, privilege, or franchise heretofore or hereafter granted to or conferred upon any person or persons whomsoever by any law of this state in all cases where such right, privilege, or franchise would be in direct aid of the business for which such corporation so acquiring or purchasing the same was organized.

[1775c. Relates to public service corporations.]

**Sec. 1776. Directors to manage.** The stock, property, affairs, and business of every such stock corporation shall be under the care of and be managed by a board of directors who shall be chosen annually by the stockholders from among their number, at such time and place as shall be provided by the articles of organization or the by-laws, and shall hold one year and until their respective successors are chosen, except that when classified by the articles of organization they may be elected and hold accordingly. The directors shall choose one of their number president and such other officers as the corporate articles and by-laws require, for such term as shall be prescribed thereby; and may fill any vacancy in their board, happening after any regular annual election, until the next succeeding election.

**Sec. 1776a. Voting of stock held by one corporation in another.** In all cases in which one corporation shall hold stock in another, such stock shall, at all meetings of the stockholders of the latter corporation be voted by the president of the former, unless its board of directors, by resolution adopted at any regular or special meeting of such board, designate some other person for that purpose; and any one or more officers of the former corporation may be chosen, qualify, and act as directors and officers of the latter corporation, as in the case of other stockholders.

[Secs. 1777—1787c. Relate to non-trading corporations.]

**Sec. 1788. Purchasers of corporate rights may re-organize.** Any person or association of persons, which shall have, or may hereafter, become the owner or assignee of the rights, powers, privileges, and franchises of any corporation created or organized by or under any law of this state, by purchase under a mortgage sale, sale in bankrupt proceedings, or sale under any judgment, order, decree, or proceedings of any court in this state, including the courts of the United States sitting herein, may, at any time within two years after such purchase or assignment, organize anew by filing articles of organization as provided in this chapter or elsewhere in these statutes respecting corporations for similar purposes, and thereupon shall have the rights, privileges, and franchises which such corporation had, or was entitled to have, at the time of such purchase and sale, and such as are provided by these statutes applicable thereto. They may fix at what price, or for what number of shares, the rights, privileges, powers, franchises, and property of such former corporation purchased by them shall be put into the new organization.

Any railroad corporation existing under the laws of this state, with the authority or the approval of the holders of a majority of the shares of its capital stock given either in writing or at a meeting called for that purpose, may purchase any railroad and other property, franchises, rights, and immunities, in this or any other state or states, of any insolvent railroad corporation whose railroad shall be sold at mortgage sale, or in bankruptcy or upon any other judicial sale, provided that the railroad so purchased shall not be parallel or competing with any constructed railroad owned or controlled and operated by the purchasing corporation, and shall be a continuation of, or be connected with, or intersected by, a line of railroad owned, leased, or operated by such purchasing corporation, or which it shall be authorized to build; and in consideration of such railroad and other property, franchises, rights, and immunities, so purchased, any such purchasing railroad corporation may issue and deliver its own bonds and shares of its capital stock, in such amounts and such prices, and on such terms and conditions, including any terms and conditions as to voting power and dividends in respect of any such stock, as shall be so approved by the holders of a majority of the stock of such purchasing railroad corporation; and any and all purchases, and issues of stocks and of bonds such as are authorized by this act, heretofore made by any railroad corporation existing under the laws of this state are hereby legalized and confirmed.

### Dissolution.

**Sec. 1789. Dissolution; surrender; expiration of time.** Any corporation organized under any law may, when no other mode is specially provided, dissolve by the

adoption of a written resolution to that effect, at a meeting of its members specially called for that purpose, by a vote of the owners of at least two-thirds of the stock in the case of stock corporations and of one-half the members in other corporations; but when a mode or process of dissolution shall have been provided in the articles of organization, it shall be conducted accordingly. Duplicate copies of such resolution, with a certificate thereto affixed, signed by the president and secretary, or, if none, the corresponding officers, and sealed with the corporate seal, if there be any, stating the fact and date of the adoption of such resolution; that such is a true copy of the original, the whole number of shares of stock, and of members of such corporation, and the number of members who, or of the shares of stock whose owners, voted for its adoption, shall be forwarded to the secretary of state, one copy to be filed by the secretary of state and the other copy to be returned with certificate of the secretary of state attached, showing the date when such copy was filed and accepted by the secretary of state which said copy shall be recorded by the register of deeds of the county in which such corporation is located within thirty days after filing with the secretary of state, and thereupon such corporation shall cease to exist except for the winding up of its affairs. And the register of deeds shall note on the margin of the record of the articles of incorporation, the volume and page where such resolution is recorded. The register of deeds shall forthwith transmit to the secretary of state a certificate stating the time when such resolution was recorded and shall be entitled to a fee of twenty-five cents therefor, to be paid by the person presenting such resolution for record. Whenever the articles of organization shall provide a term to the duration of a corporation it shall cease to exist at the time so fixed except as aforesaid.

### **Amendment of charter or articles.**

**Sec. 1790. Amendments; how made.** Any corporation organized under any special charter or general law for any of the purposes for which corporations may be formed under this chapter may amend its charter or articles of organization, according to the provisions of section 1774, and may at a meeting of the members, by a vote of the owners of at least two-thirds of the stock in the case of stock corporations and of a majority of the members in other corporations, abandon its organization and organize under this chapter by the adoption of articles of organization according to section 1772. A true copy of such articles, together with a certificate of the president and secretary, sealed with the corporate seal, stating the fact and date of adoption of such articles, that such copy is a true copy of the original, the whole number of the shares of stock and of the members of such corporation, and the number of members who voted, or the shares of stock whose owners voted, for its adoption, shall be recorded and filed by the president or secretary in like manner, with like effect and subject to the like penalties prescribed in section 1772; provided, that in amending the charter of any corporation organized under any special, general, or private and local law which did not require that its charter or articles of organization should be recorded in the office of the register of deeds of the county in which such corporation was located it shall be sufficient to record a certified copy of such amendment in the office of the register of deeds of such county and to file a like copy with the secretary of state.

### **Defective organization.**

**Sec. 1791. Corporations hitherto formed, their powers; defects cured.** Every corporation heretofore lawfully organized under any general law for any of the purposes embraced in section 1771 and existing at the time of the adoption of these statutes shall continue in existence in the same manner and have the same powers as if lawfully organized under this chapter and be governed by these statutes; and every joint-stock company organized under the provisions of chapter 73 of the revised statutes of 1858, prior to the first day of January, 1875, shall be deemed legally organized and remain in existence with the rights and privileges granted thereby, unaffected by the repeal thereof. Whenever articles of association have heretofore, and since the enactment of the revised statutes of 1878, been filed in the office of the secretary of state or of the register of deeds for any of the purposes for which corporations might be formed under chapter 66 (86) of the revised statutes of 1878, and an organization has been formed under and pursuant to said articles,

such organization is hereby declared to be legal and the corporation to be duly organized.

[Secs. 1791a—1791i. Relate to non-trading corporations.]

**Sec. 1791j. Trusts and combinations; cancellation of charter; affidavit.** Any corporation organized under the laws of this state which shall enter into any combination, conspiracy, trust, pool, agreement, or contract intended to restrain or prevent competition in the supply or price of any article or commodity in general use in this state, or constituting a subject of trade or commerce therein, or which shall in any manner control the price of any such article or commodity, fix the price thereof, limit or fix the amount or quantity thereof to be manufactured, mined, produced, or sold in this state, or fix any standard or figure by which its price to the public shall be in any manner controlled or established, shall, upon proof thereof, in any court of competent jurisdiction, have its charter or authority to do business in this state cancelled and annulled. Every corporation shall upon filing its annual report with the secretary of state, make and attach thereto the affidavit of its president, secretary, or general managing officer, fully stating the facts in regard to the matters specified in this section.

**Sec. 1791l. Ouster.** Upon complaint being made to the attorney general and evidence produced to him which shall satisfy him that any such corporation has violated any of the conditions specified in sections 1791j and 1791k, he shall forthwith bring an action in the name of the state in any circuit court of this state to have the charter of such corporation forfeited, cancelled, and annulled, and upon due proof being made thereof to the satisfaction of the court, judgment shall be entered therefor.

**Sec. 1791n. Employees joining labor organizations.** No person, corporation, agent, or officer on behalf of any person or corporation, shall coerce or compel any person or persons into an agreement, either written or verbal, not to join or become a member of any labor organization, as a condition of such person or persons securing employment or continuing in the employment of any such person or corporation, and no person or corporation shall discharge an employe because he is a member of any labor organization.

Any person or corporation violating any of the provisions of this act shall be fined not less than two hundred dollars nor more than one thousand dollars, or be punished by imprisonment in the county jail not to exceed nine months or both.

**Sec. 1791n—1. Milk, cream, butter-fat: prohibiting unfair discrimination in buying.** Any person, firm or corporation, foreign or domestic, engaged in the business of buying milk, cream, or butter-fat for the purpose of manufacture, that shall intentionally, for the purpose of creating a monopoly or of destroying the business of a competitor in any locality, discriminate between different sections, communities, towns, villages, or cities of this state, by buying such commodity at a higher price or rate in one section, community, town, village, or city, than is paid for the same commodity by said person, firm, or corporation in another section, community, town, village, or city, after making due allowance for the difference, if any, in the actual cost of transportation from the point of purchase to the locality of manufacture shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

**Sec. 1791n—2. Penalty.** Any person, firm, or corporation, and any officer, agent, or receiver of any firm, company, association, or corporation, or any member of the same or any individual, violating any of the provisions of the preceding section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or by both such fine and imprisonment.

**Sec. 1791n—3. Contracts; void.** All contracts or agreements made in violation of any of the provisions of this act shall be void.

**Sec. 1791n—4. Prosecutions.** It shall be the duty of the district attorneys in their respective counties to enforce the provisions of the preceding sections of this act by appropriate actions in courts of competent jurisdiction.

**Sec. 1791n—5. Domestic corporations: complaints to secretary of state; procedure.** If a complaint shall be made to the secretary of state that any corporation authorized to do business in this state is guilty of unfair discrimination within the

terms of the preceding sections, it shall be the duty of the secretary of state to refer the matter to the attorney general, who shall, if the facts justify it in his judgment, co-operate with the district attorney and cause proceedings to be commenced in the proper court against such corporation and its officers and members.

Sec. 1791n—6. **Forfeiture.** If any such corporation, foreign or domestic, authorized to do business in this state, is found guilty of such unfair discrimination, such finding shall cause a forfeiture of all the privileges and rights conferred by the laws of this state upon corporations and shall bar its rights to do business in this state.

Sec. 1791n—7. **Ouster.** If any corporation having been found guilty of a violation of any of the provisions of this act, shall continue or attempt to do business in this state, it shall be the duty of the attorney general, by a proper action in the name of the state of Wisconsin, to oust such corporation from all business of every kind and character in this state.

Sec. 1791n—8. **Cumulative remedies.** Nothing in this act shall be construed as repealing any other law of this state, but the remedies herein provided shall be cumulative to all other remedies provided by law in and for such cases.

## Statutes on Foreign Corporations.<sup>1)</sup>

### Alabama.

#### Constitution.

Sec. 232. No foreign corporation shall do any business in this state without having at least one known place of business and an authorized agent or agents therein, and without filing with the secretary of state a certified copy of its articles of incorporation or association. Such corporation may be sued in any county where it does business, by service of process upon an agent anywhere in the state. The legislature shall, by general law, provide for the payment to the state of Alabama of a franchise tax by such corporation, but such franchise tax shall be based on the actual amount of capital employed in this state. Strictly benevolent, educational, or religious corporations shall not be required to pay such a tax.

#### Code, 1907.

Sec. 3640. **Foreign corporations may acquire stock of domestic corporations.** Any corporation organized and existing under the laws of any other state or territory of the United States, or any foreign country or territory, may acquire by subscription to the capital stock, or by purchase, or otherwise, and hold, own, and vote shares of the capital stock of any corporation organized and existing under the laws of the state of Alabama, if such foreign corporation shall be authorized and empowered, by its own charter, or by the laws under which it was created, to acquire, own, and hold stock in other corporations, but such foreign corporation must have complied with the constitution and laws of the state of Alabama with reference to the doing of business in Alabama by foreign corporations.

Sec. 3641. **Monopoly, trust, or unlawful combination prohibited.** Nothing contained in the preceding section shall be construed or interpreted as authorizing the creation of any monopoly or trust, or unlawful combination in the nature of a trust or monopoly.

Sec. 3642. **Foreign corporation must file instrument of writing designating agent and place of business in this state.** Every corporation not organized under the laws of this state shall, before engaging in or transacting any business in this state, file an instrument of writing, under the seal of the corporation and signed officially by the president and secretary thereof, designating at least one known place of business in this state and an authorized agent or agents residing thereat; and when any such corporation shall abandon or change its place of business as designated in such instrument, or shall substitute another agent or agents for the agent or

<sup>1)</sup> The statutes of other States will be found *supra*.

agents designated in such instrument of writing, such corporation shall file a new instrument of writing as herein provided, before transacting any further business in this state.

**Sec. 3643. Where filed.** Such instrument, when filed by a corporation engaged in any business of insurance, must be filed in the office of the insurance commissioner, and when filed by a corporation engaged in any other business than that of insurance, must be filed in the office of the secretary of state.

**Sec. 3644. Unlawful for foreign corporation to transact business in this state before declaration is filed; penalty.** It is unlawful for any foreign corporation to engage in or transact any business in this state before filing the written instrument provided for in the two preceding sections; and any such corporation that engages in or transacts any business in this state without complying with the provisions of the two preceding sections shall, for each offense, forfeit and pay to the state the sum of one thousand dollars.

**Sec. 3645. Unlawful to act as agent of foreign corporation before such declaration is filed; penalty.** It is unlawful for any person to act as agent or transact any business directly or indirectly, in this state, for or in behalf of any foreign corporation which has not designated a known place of business in this state and an authorized agent or agents residing thereat, as required in this article; and any person so doing shall, for each offense, forfeit and pay to the state the sum of five hundred dollars.

**Sec. 3646. Solicitor must enforce penalties; commissions.** Every penalty provided for in this article shall be sued for and recovered in the name of the state of Alabama, by the solicitor of the circuit or county in which the offense is committed, and when collected, must be paid by the solicitor into the state treasury for the use of the state, less twenty-five per cent. to be retained by such solicitor for his services. The attorney-general shall represent the state in such actions carried to the supreme court, and for his services therein is entitled to one-half the commissions herein allowed to the solicitor.

**Sec. 3647. Admission fees exacted of foreign corporations.** No corporation created by the laws of any other state or of any foreign country, except foreign corporations which qualified in good faith to do business in this state prior to March 7, 1907, shall engage in or transact any business in this state without first having paid into the treasury for the use of the state the following charter fees: each foreign corporation whose actual amount of capital employed or to be employed in this state, is one hundred dollars or less, shall pay a charter fee of twenty-five per centum of the actual amount of capital employed or to be employed in this state by it. Each foreign corporation whose actual amount of capital employed in this state exceeds one hundred dollars and does not exceed one thousand dollars, shall pay a charter fee of twenty-five per centum upon the first one hundred dollars of the actual amount of capital employed in this state by it, and five per centum upon all such remaining actual amount of capital employed in this state by it over one hundred dollars, and up to and not exceeding the said limit of one thousand dollars. Each foreign corporation whose actual amount of capital employed in this state exceeds one thousand dollars shall pay a charter fee of twenty five per centum upon the first one hundred dollars of actual amount of capital employed in this state by it and five per centum upon all such actual capital employed in this state by it over one hundred dollars and up to one thousand dollars. And one-tenth of one per cent. of such actual amount of capital in excess of \$1,000. All corporations or mutual companies which have no capital stock, and all corporations which shall engage in this state solely in the business of lending money shall pay a fee of \$25.00.

**Sec. 3648. Statement to be filed.** Such foreign corporation shall, at the time of paying such tax into the treasury, file in the office of the state auditor an instrument of writing under the seal of the corporation and signed officially by the president or other chief officer and the secretary of such corporation, showing the name of the corporation, and the state or country under whose laws it was incorporated, the amount of the total authorized capital of such corporation, the total amount of the actual paid-in capital of such corporation, its principal place of business, the name of the authorized agent of such corporation in this state, and the postoffice address of such authorized agent of such corporation in this state and the location of the principal place of business of such corporation in this state, and also a statement showing the actual amount of capital employed in this state by such corpo-



ration, if such corporation is at the date of the filing of such statement engaged in business in this state, and if such corporation is not at the date of the filing of such statement engaged in business in this state, the statement shall state the actual amount of capital to be employed by such corporation in this state, which statement shall be sworn to by such president or other executive officer and the secretary of said corporation, before some officer authorized under the laws of this State to administer oaths or take acknowledgment of conveyances.

**Sec. 3649. Tax to be paid but once; failure to pay vitiates contracts.** The tax required by the second preceding section shall be paid but once, only; but such payment does not relieve any foreign corporation from the duty of complying with the requirements of existing laws. All contracts made in this state by any foreign corporation which has not first complied with the provisions of the two preceding sections, shall at the option of the other party to the contract, be wholly void.

**Sec. 3650. Exceptions.** The provisions of this article do not apply to corporations organized under the laws of the United States; nor to corporations engaged in or transacting business of interstate commerce only within the state.

**Sec. 3651. Permits to do business in state; issuing and contents of.** Every foreign corporation or non-resident corporation, or corporation organized under or by authority of the laws of any state or government other than the state of Alabama, shall be required to procure from the secretary of state a permit admitting it to do business in the state of Alabama, which permit shall be prepared by and countersigned by the state auditor, and shall be delivered by the state auditor to the secretary of state in a well bound book with a stub and blanks therein for showing the date thereof the names of the corporations, and when issued, and the character or nature of business engaged in by said corporation.

**Sec. 3652. Fees for issuing permits; payments into state treasury.** For such permit the said corporation shall, on the first day of January of every year, pay to the secretary of state a fee of ten dollars per annum or for any part of a year. The secretary of state shall keep a full and complete account of all moneys received by him for and on account of such permit, and shall pay the same into the state treasury, as all other moneys collected or received by him are paid into said treasury.

**Sec. 3653. Unlawful to do business without permit, contracts void.** No such corporation, its agents, officers, or servants, shall transact any business for or in the name of such corporation within the state of Alabama, without having first procured said permit, and all contracts, engagements, or undertakings or agreements with, by, or to such corporation, made without obtaining such permit, shall be null and void.

**Sec. 3654. Removing or attempting to remove causes of action from state to federal court ground for cancellation of permit.** Any foreign corporation or non-resident corporation, or corporation organized under or by authority of the laws of any other state or government than the state of Alabama, doing business in this state, and having obtained a permit, as required by law, being sued in any of the courts of the state of Alabama, which files or causes to be filed in such state court any petition, motion, or plea, praying or asking that said cause be removed to any federal court, or which causes or procures the issuance of any writ, warrant, notice, citation, or summons from any federal court, removing said cause from such state court to any federal court, the clerk of the state court shall forthwith certify a copy of said petition, motion, plea, writ, warrant, notice, citation, or summons to the secretary of state, who shall thereupon immediately cancel the permit issued to such corporation and make and enter on the stub thereof an order in substance: "This permit is cancelled for a violation of the law under which issued, by the removal of a civil cause from a court of this state to the federal court," date and sign the same.

**Sec. 3655. Certified copy of cancellation stub or order as evidence of cancellation.** A certified copy of such stub and order thereon under the seal of the office of the secretary of state shall be evidence of such fact, in any of the courts of this state; but no obligations then existing to the corporation nor any contracts of the corporation then existing shall be affected by such cancellation.

**Sec. 3656. Contracts, Agreements, etc., void after cancellation of license.** After such permit shall be cancelled, any contract, agreement, or undertaking with or by or to such corporation shall be null and void.

**Sec. 3657. Reissuing permit after cancellation, effect of.** After a cancellation of the permit of any corporation, it shall be unlawful for the secretary of state to



again issue a permit to such a corporation to do business until the said corporation shall pay to the secretary of state for the use of the state a sum in cash equal to one-tenth of one per cent of the capital stock of said corporation, and after such payment and the issue of such new permit, such corporation shall be thereby restored to the right to engage in and transact business in this state, but such new permit shall be subject to forfeiture as provided in this article.

**Sec. 3658. Interstate commerce not interfered with.** This article and no provision thereof is intended, nor shall it be construed, to interfere with or prohibit or regulate the transaction of interstate commerce or business authorized under the laws and constitution of the United States.

**Sec. 5306. Service on designated agent of foreign corporations; proof of agency.** When a foreign corporation has filed an instrument in writing designating one or more agents in this state as provided by this code, process issuing against such foreign corporation may be served upon any agent so designated; and the certificate of the secretary of state, or of the auditor, as the case may be, showing such designation, is evidence of the fact of such agency. If the agent designated by such foreign corporation shall die, resign, remove from the state, or his authority shall cease from any cause, and no other agent shall be designated by such foreign corporation, the service of process issuing against it may be made upon the secretary of state; and the officer serving such process upon the secretary of state must immediately transmit a copy thereof by mail to such corporation, at its home office, and state such fact in his return.

**Sec. 6628. Foreign corporations, their agents, officers, etc., contracting or doing business in state without licenses, penalty for.** Any corporation or any person acting as agent, servant, or officer of such foreign corporation or nonresident corporation or corporation organized under or by authority of the laws of any state or government other than the state of Alabama, who shall make or attempt to make any contract, agreement, undertaking, or engagement with, by, or in the name of or for the use or benefit of any such corporation without a license authorizing such corporation to do business in this state, or after such license shall have been canceled, shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than one hundred dollars, nor more than one thousand dollars, and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than twelve months, one or both, at the discretion of the jury trying the case.

**Sec. 6629. Doing business without license, or after cancellation, misdemeanor, penalty for.** Any corporation or any person acting as agent, servant, or officer of such foreign or nonresident corporation, or corporation organized under or by authority of the laws of any other state or government than the state of Alabama, who shall make or attempt to make any contract, agreement, undertaking, or engagement with, by, or in the name of or for the use or benefit of any such corporation, without such license, or after the same shall have been cancelled as provided in article 21 of chapter 69 of this code, shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars, and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than twelve months, one or both, at the discretion of the jury trying the case. Provided, that it is not intended hereby to interfere with or prohibit the transaction of interstate business authorized under the laws and constitution of the United States.

---

## Alaska.

### Carter's Laws, 1901, Part V, c. 23.

**Sec. 225. To file copy of charter and appoint agent.** All corporations or joint stock companies organized under the laws of the United States, or the laws of any state or territory of the United States, shall, before doing business within the district, file in the office of the secretary of the district and in the office of the clerk of the district court for the division wherein they intend to carry on business, a duly authenticated copy of their charter or articles of incorporation, and also a statement, verified by the oath of the president and secretary of such corporation,

and attested by a majority of its board of directors, showing: 1. The name of such corporation and the location of its principal office or place of business without the district; and, if it is to have any place of business or principal office within the district, the location thereof; 2. The amount of capital stock; 3. The amount of its capital stock actually paid in in money; 4. The amount of its capital stock paid in in any other way, and in what; 5. The amount of the assets of the corporation and of what the assets consist, with the actual cash value thereof; 6. The liabilities of such corporation, and if any of its indebtedness is secured, how secured, and upon what property. Such corporation or joint stock company shall also file at the same time and in the same offices, a certificate, under the seal of the corporation and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the corporation has consented to be sued in the courts of the district upon all causes of action arising against it in the district, and that service of process may be made upon some person, a resident of the district, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the corporation or company, and such agent shall reside at the principal place of business of such corporation or company in the district.

**Sec. 226. Consent of agent, etc.** The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of the consent, executed in like manner. A certified copy of the designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

**Sec. 227. Death or removal of agent.** In case of the death, removal from the district, or disqualification of the person so designated, or of the revocation of his consent, it shall be the duty of the clerk of the district court to notify such corporation or company; and it shall be the duty of such corporation or company, within sixty days thereafter, to designate another person in the manner hereinbefore provided.

**Sec. 228. Penalty for failure to comply.** If any such corporation or company shall attempt or commence to do business in the district without having first filed said statements, certificates, and consents required by this chapter, it shall forfeit the sum of twenty-five dollars for every day it shall so neglect to file the same; and every contract made by such corporation, or any agent or agents thereof, during the time it shall so neglect to file such statements, certificates, or consents, shall be voidable at the election of the other party thereto. It shall be the duty of the United States attorney for the district to sue for and recover, in the name of the United States, the penalty above provided, and the same, when so recovered, shall be paid into the treasury of the United States.

**Sec. 229. Annual reports to be filed.** Every such corporation or company shall annually, and within thirty days from the first day of July of each year, make a report, which shall be in the same form and contain the same information as required in the statement mentioned in section two hundred and twenty-five of this chapter, which report shall be filed in the office of the clerk of the district court for the division wherein the business of the corporation is carried on.

**Sec. 230. Existing corporations to comply.** Any such corporation or company that has heretofore engaged in business, performed acts, or made contracts in the district, may, within ninety days from the time this act goes into effect, comply with the provisions hereof, and thereupon all its acts and contracts done and made before this act goes into effect shall be valid and enforceable.

**Sec. 231. Penalty for failure to comply.** If any such corporation or company shall fail to comply with any of the provisions of this chapter, all its contracts with citizens of the district shall be void as to the corporation or company, and no court of the district, or of the United States, shall enforce the same in favor of the corporation or company so failing.

**Arizona.****Rev. St. 1901.**

**Sec. 909. Foreign corporations must file copies of their articles.** Any company incorporated under the laws of any other state, territory, or foreign country which shall carry on any business, enterprise, or occupation in this territory shall, before entering upon, doing, or transacting such business, enterprise, or occupation in this territory, file a certified and duly authenticated copy of its articles of incorporation or charter and the appointment of an agent as hereinafter specified with the territorial auditor and the county recorder in each county in this territory in which such business, enterprise, or occupation is to be carried on, and shall publish at least six times in some newspaper published in each of the counties in this territory in which such business, enterprise, or occupation is to be carried on, a copy of its articles of incorporation, and upon the expiration thereof, file an affidavit in the office of the territorial auditor stating that such publication has been made according to law. This section, however, shall not apply to insurance corporations.

**Sec. 910. Must appoint resident agent.** Any such foreign corporation shall, in writing, over the hand of its president or other chief officer, attested by its secretary or by a resolution of its board of directors, appoint a resident agent in each county in this territory in which such corporation proposes to carry on any business, enterprise, or occupation. All such agents shall be actual and bona fide residents of the county for which they are appointed, and of the territory for at least three years, and the full name and residence of each shall be stated in the writing appointing them.

**Sec. 911. Must comply with law before transacting business.** No corporation such as is mentioned in section 149 (909) of this title shall transact any business whatsoever in this territory until and unless it shall have first filed its articles of incorporation and appointment of an agent as required in the two preceding sections, and every act done by it prior to the filing thereof shall be utterly void.

**Sec. 912. Must maintain agency.** Should any agent so appointed absent himself from the county in which his appointment is filed for a period of three months consecutively, and no other agent be appointed for said corporation within four months after the commencement of such absence of such agent, the right to transact business by the corporation represented by such agent shall cease, and all acts or contracts performed or made thereafter shall, at the option of any person interested, be declared null and void.

**Sec. 913. Rights extended to all who comply with this chapter.** Upon complying with the provisions of this chapter any association, company, or corporation organized or incorporated under the laws of any other state or territory, or any foreign country, shall be qualified and competent to take, receive, and acquire, either by purchase or by operation of law, and possess, own, hold, and dispose of any and all kinds of real and personal property within this territory, and to prosecute and defend and to appear, especially and generally, in any action in any court of or within this territory, and shall have, hold and enjoy, except as hereinafter provided, the same rights and privileges as are now held and enjoyed, or that may be hereafter held and enjoyed by any association, company, or corporation organized or incorporated under the laws of this territory. Provided, no association, company, or corporation organized or incorporated under the laws of any foreign country, shall take, receive, acquire, possess, hold, or own, at any one time, more than three hundred and twenty acres of real estate, exclusive of mines and mineral lands and land necessary or convenient for milling, smelting, reducing, or working ores, or for manufacturing or commercial purposes.

**Arkansas.****Constitution.****Article XII. Municipal and Private Corporations.**

**Sec. 11. Foreign corporations.** Foreign corporations may be authorized to do business in this state under such limitations and restrictions as may be prescribed

by law. Provided, that no such corporation shall do any business in this state except while it maintains therein one or more known places of business and an authorized agent or agents in the same upon whom process may be served; and, as to contracts made or business done in this state, they shall be subject to the same regulations, limitations, and liabilities as like corporations of this state, and shall exercise no other or greater powers, privileges, or franchises than may be exercised by like corporations of this state, nor shall they have power to condemn or appropriate private property.

### **Acts, 1907, No. 313. An Act to permit Foreign Corporations to do Business in Arkansas and fixing the Fees to be paid by all Corporations.<sup>1)</sup>**

**Sec. 1. Foreign corporations required to file certain papers; prohibited from removing suits to federal courts.** Every company or corporation incorporated under the laws of any other state, territory, or country, including foreign railroad and foreign fire and life insurance companies, now or hereafter doing business in this state, shall file in the office of the secretary of state of this state a copy of its charter or articles of incorporation or association, or a copy of its certificate of incorporation, duly authenticated and certified by the proper authority, together with a statement of its assets and liabilities and the amount of its capital employed in this state, and shall also designate its general office or place of business in this state, and shall name an agent upon whom process may be served. Provided, before authority is granted to any foreign corporation to do business in this state, it must file with the secretary of state a resolution adopted by its board of directors, consenting that service of process upon any agent of such company in this state, or upon the secretary of state of this state, in any action brought or pending in this state, shall be a valid service upon said company; and if process is served upon the secretary of state it shall be his duty to at once send it by mail, addressed to the company at its principal office; and if any company shall, without the consent of the other party to any suit or proceeding brought by or against it in any court of this state, remove said suit or proceeding to any federal court or shall institute any suit or proceeding against any citizen of this state in any federal court, it shall be the duty of the secretary of state to forthwith revoke all authority to such company and its agents to do business in this state, and to publish such revocation in some newspaper of general circulation published in this state; and if such corporation shall thereafter, continue to do business in this state, it shall be subject to the penalty of this act for each day it shall continue to do business in this state after such revocation.

**Sec. 2. Penalty for failure to comply with act.** Any foreign corporation which shall fail to comply with the provisions of this act, and shall do any business in this state, shall be subject to a fine of not less than \$ 1,000, to be recovered before any court of competent jurisdiction, and all such fines so recovered shall be paid into the general revenue fund of the county in which the cause of action shall accrue, and it is hereby made the duty of the prosecuting attorneys to institute said suits in the name of the state, for the use and benefit of the county in which the suit is brought, and such prosecuting attorney shall receive as his compensation one-fourth of the amount recovered, and as an additional penalty, any foreign corporation which shall fail or refuse to file its articles of incorporation or certificate as aforesaid, cannot make any contract in this state which can be enforced by it either in law or in equity, and the complying with the provisions of this act after suit is instituted shall in no way validate said contract.

**Sec. 3. Fees.** That all corporations hereafter incorporated in this state and all foreign corporations seeking to do business in this state shall pay into the treasury of this state for the filing of said articles a fee of \$ 25.00 where the capital stock is

<sup>1)</sup> The operation of this act is materially restricted by the decision of the United States Supreme Court in *Ludwig v. Western Union Telegraph Co.*, (1910) 216 U. S. 146. holding that the provisions of this act requiring a foreign corporation engaged in interstate commerce to pay as a license tax or fee for doing intrastate business a given amount on its entire capital stock whether employed within

the state or elsewhere, directly burdens the interstate business of such corporation and its property outside the jurisdiction and is unconstitutional. The fees required by the act of 1907 are also required by the act No. 294 of 1909, except that the latter act is applicable only to foreign corporations hereafter seeking to do business in the state.

\$ 50,000.00 or under; \$ 75.00 where the capital stock is over \$ 50,000.00 and not more than \$ 100,000.00; and \$ 25.00 additional for each \$ 100,000.00 of capital stock.

Any foreign mutual corporation having no capital stock shall be required to pay to the secretary of state for filing its articles of incorporation the sum of \$ 500.00. Provided, however, nothing in this section shall apply to fraternal orders that write insurance.

### Kirby's Digest, 1904.

**Sec. 827. Charter recorded, evidence.** The secretary of state shall then cause all such charters, articles of incorporation, or association, so filed to be duly recorded in a book kept for that purpose, and shall cause to be issued to said corporation a copy of such charter, or articles of incorporation, or certificate so filed, properly certified under the seal of his office, and a copy of such charter, or articles of incorporation, or certificate, certified to by the secretary of state shall be taken by all the courts of this state as evidence that the said corporation has complied with the provisions of this act, and is entitled to all the rights and benefits therein conferred.

**Sec. 828. Rights of; railroads, drummers excepted.** And such corporation shall be entitled to all the rights and privileges, and subject to all the penalties conferred and imposed by the laws of this state upon similar corporations formed and existing under the laws of this state; provided, that the provisions of this act requiring copy of original articles of incorporation of charter, and certificate naming an agent, and to pay certain fees therefor, shall not apply, to railroad companies which have heretofore built their lines of railroad into or through this state; provided, further, that the provisions of this act are not intended and shall not apply to "drummers" or traveling salesmen soliciting business in this state for foreign corporations which are entirely non-resident.

**Sec. 830. Cannot bring suit; additional penalty.** No foreign corporation, as above defined, which shall fail to comply with this act, can maintain any suit or action, either legal or equitable, in any of the courts of this state, upon any demand whether arising out of contract or tort.

**Sec. 834. Service on agent gives jurisdiction.** Service of summons and other process upon the agent designated under the provisions of section 825 at any place in this state shall be sufficient service to give jurisdiction over such corporation to any of the courts of this state, whether the service was had upon said agent within the county where the suit is brought or is pending or not.

See now Acts, 1907, No. 313, sec. 1, supra.

**Sec. 835. Service on auditor, when.** In all cases where a cause of action shall accrue to a resident or citizen of the state of Arkansas, by reason of any contract with a foreign corporation, or where any liability on the part of a foreign corporation shall accrue in favor of any citizen or resident of this state, whether in tort or otherwise, and such foreign corporation has not designated an agent in this state upon whom process may be served, or has not an officer continuously residing in this state upon whom summons and other process may be served so as to authorize a personal judgment, service of summons and other process may be had upon the auditor of state, and such service shall be sufficient to give jurisdiction of the person to any court in this state having jurisdiction of the subject matter, whether sitting in the township or county where the auditor is served, or elsewhere in the state. This act shall not be effective in cases where its enforcement, would conflict with the powers of congress or the federal laws to regulate commerce between the states.

**Sec. 6048. Service on foreign corporations.** Where the defendant is a foreign corporation, having an agent in this state the service may be upon such agent.

### Colorado.

### Code, 1909.

[Secs. 903—909. Relate to fees payable by foreign corporations.]

**Sec. 910. Certificate of authority. Fee. Shall not transact business without.** No corporation, joint stock company, or association, incorporated by or under any

general or special law of this state, or by or under any general or special law of any foreign state or kingdom or of any state or territory of the United States, beyond the limits of this state, shall exercise any corporate powers or acquire or hold any real or personal property, or any franchises, rights, or privileges, or do any business or prosecute or defend in any suit, in this state until it shall have received from the secretary of this state a certificate setting forth that full payment has been made by such corporation, joint stock company, or association, of all fees and taxes prescribed by law to be paid to the secretary of state, and every such corporation, joint stock company, or association shall pay to the secretary of state for each certificate, a fee of five dollars. Nothing in this section shall apply to corporations not for pecuniary profit, or corporations organized for religious, educational, or benevolent purposes.

**Sec. 911. Annual report. Contents. Filing fee. Liability of officers and directors.**

Every corporation, joint stock company, or association, incorporated by or under any general or special law of this state, or by any general or special law of any foreign state or kingdom, or of any state or territory of the United States, beyond the limits of this state, shall, within sixty days next after the first day of January in each year, commencing with the year 1902, make and file an annual report in the office of the secretary of state, showing:

First, the names of its officers and their several places of residence, together with the street or business address of such officer.

Second, the names of its directors or trustees and their several places of residence, together with the street or business address of such director or trustee.

Third, the amount of its capital stock as fixed and determined by its articles of incorporation and amendments thereto.

Fourth, the proportion of said capital stock actually paid in.

Fifth, setting forth how the same was paid, whether in cash, by the purchase of property, or otherwise.

Sixth, the amount of the indebtedness of said corporation at the date of filing said report.

Seventh, setting forth whether or not it is engaged in the active operation of its business within the state of Colorado.

Eighth, such other information as will show with reasonable fullness and certainty the condition of its real and personal property, and the financial condition of such corporation, joint stock company, or association at the date of filing such report.

(The omitted portion relates to non-trading corporations.)

And if any such corporation, joint stock company, or association, shall fail, refuse, or omit to file the annual report aforesaid, and to pay the fee prescribed therefor, within the time above prescribed, all the officers and directors of said corporation shall be jointly and severally and individually liable for all debts of such corporation, joint stock company, or association, that shall be contracted during the year next preceding the time when such report should by this section have been made and filed, and until such report shall be made and filed.

**Sec. 916. Must file copy of charter.** Every company incorporated under the laws of any foreign state or kingdom, or of any state or territory of the United States, beyond the limits of this state, and now or hereafter doing business within this state shall file in the office of the secretary of state a copy of their charter of incorporation; or in case such company is incorporated by a certificate under any general incorporation law duly certified and authenticated by the proper authority of such foreign state, kingdom, or territory.

**Sec. 917. Designation of place of business and agent. Restrictions.** Foreign corporations shall, before they are authorized or permitted to do any business in this state, make and file a certificate, signed by the president and secretary of such corporation, duly acknowledged, with the secretary of state, and in the office of the recorder of deeds of the county in which such business is carried on, designating the principal place where the business of such corporation shall be carried on in this state, and an authorized agent or agents in this state residing at its principal place of business upon whom process may be served; and such corporation shall be subjected to all the liabilities, restrictions, and duties which are or may be imposed upon such corporations of like character organized under the general laws of this state, and shall have no other or greater powers. And no foreign or domestic cor-

poration, established or maintained in any way for pecuniary profit of its stockholders or members, shall purchase or hold real estate in this state except as provided for in this act, and no corporation doing business in this state, incorporated under the laws of any other state, shall be permitted to mortgage, pledge, or otherwise encumber its real or personal property situated in this state, to the injury or exclusion of any citizen, citizens, or corporations of this state, who are creditors of such foreign corporation, and no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other state, shall take effect as against any citizen or corporation of this state, until all its liabilities due to any person or corporation in this state at the time of recording such mortgage, have been paid and extinguished; Provided, however, that if any foreign corporation, other than those expressly mentioned herein, intending or desiring to mortgage any or all of its property for any debt created or to be created in any other state, shall give notice of such intention or desire by publication for six (6) successive weeks prior thereto, in some daily or weekly newspaper printed within the county wherein the property so intended or desired to be mortgaged is situated, or if there be no such newspaper, by posting such notices in five (5) public places within such county, requesting all citizens and corporations of this state, having any claims or demands of any kind or nature whatsoever against the said foreign corporation, to file the same duly verified with the county clerk of the county in which such property so desired to be mortgaged is situated, on a date specified in such notice, which date shall be subsequent to the date of the last publication of such notice or in case of failure so to file such claim or demand, then and in such case, a mortgage given by such foreign corporation to secure any debt created in any other state, shall take effect as against any citizen or corporation of this state, who shall fail to file his or its claim.

**Sec. 918. Documents, where filed. Copies evidence. Originals.** The several certificates, statutes, and charters mentioned in section twenty-four (24) of this act shall be by the secretary of state filed and preserved in his office as a part of the record thereof, and he shall be entitled to a fee of fifty cents for receiving and filing every such certificate and statute. Copies of such charters, statutes, and certificates, duly certified by the secretary of state under his seal of office, shall be received in all courts of this state, as sufficient evidence of the corporate character of such incorporations, and of all their powers, duties, and liabilities, and the originals thereof may in like manner be used in evidence of these matters, with like effect.

**Sec. 919. Liability for failure to file documents.** A failure to comply with the provisions of sections 23 and 24 of this act shall render each and every officer, agent, and stockholder of any such corporation, so failing herein, jointly and severally personally liable on any and all contracts of such company made within this state during the time that such corporation is so in default.

**Sec. 920. Citizens of this state protected against reconstruction.** No foreign corporation doing business in this state shall be permitted to effect a reconstruction, by liquidation or otherwise, nor shall any such reconstruction or liquidation take effect against any citizen of this state, unless all the rights, shares, and interests of any citizen of this state shall have been or shall be protected, and the stock interests of any citizen of this state in such corporation shall have been or shall be fully recognized, and in its original condition without diminution in number, amount, or face value.

**Sec. 921. Foreign corporations. Existence. Renewal.** No foreign corporation doing business in this state shall be allowed a term of corporate existence of any longer period than domestic corporations of like character; and every such foreign corporation doing business in this state shall be required to file a renewal certificate of its corporate existence and pay the same fees therefor as if such corporation were a domestic corporation organized under the laws of this state. But in no case shall the time be extended beyond the corporate existence of such foreign corporation in the state or county where it was originally organized.

**Sec. 922. Amendment of articles. Fee.** Every foreign corporation doing business in this state and desirous of amending its articles of incorporation shall pay to the secretary of state the same fee for filing such amended articles of incorporation as is now provided by law for the filing of amendments for domestic corporations.

**Sec. 3725. Service of summons on corporations. Return of summons.** In all suits brought in any justice court, police court, or court not of record in this state,

service of summons may be made upon private or foreign corporations in the manner following, to wit: when suit is brought in the county in which such corporation has its principal office, or in which its principal business is carried on, service may be made by delivering a copy of the summons to the president or other head of such corporation, or to the secretary, cashier, treasurer, or general manager thereof, or, in case of the absence of said officers from the county, then upon any stockholder residing in the county in which such suit is brought. In all other cases service of summons may be made upon such corporation by delivering a copy thereof to the principal, local or station agent of such corporation, resident and employed in the county in which such suit is brought; Provided, that in all suits brought against corporations in the courts hereinbefore designated, summons shall be made returnable in not less than twenty days, nor more than thirty days from date of issuance of summons, and shall, to make service valid and effectual, be served at least ten days prior to the return day designated in the summons. In case of failure of service, alias and pluries summons, if necessary, may be issued. Nothing herein contained shall be construed to authorize the commencement of suit before any justice of the peace in any precinct or township other than that in which suit may be commenced by plaintiff, as is now provided by law.

---

### District of Columbia.

---

There are no special provisions regarding the recognition or qualification to do business of foreign trading corporations. No reports are required. Foreign corporations not created under the laws of some state or territory of the United States, and corporations or associations in which more than fifty per cent. of the stock is owned by alien persons or association are prohibited from acquiring land in the District. (Code, 1906, secs. 396—398.) But no foreign corporation may transact any business not allowed by its charter. (Code, 1906, see 793.)

---

### Code, 1906.

---

**Sec. 1537. Service on foreign corporations.** In actions against foreign corporations doing business in the district all process may be served on the agent of such corporation or person conducting its business, or in case he is absent and cannot be found by leaving a copy at the principal place of business in the district, or if there be no such place of business, by leaving the same at the place of business or residence of such agent in said district, and such service shall be effectual to bring the corporation before the court.

When a foreign corporation shall transact business in the district without having any place of business or resident agent therein, service upon any officer or agent of such corporation in the district shall be effectual as to suits growing out of contracts entered into or to be performed in whole or in part, in the District of Columbia or growing out of any tort heretofore or hereafter committed in the said district.

---

### Florida.

#### Gen. St. 1906.

---

**Sec. 1406. Service of process.** Process against a corporation, domestic or foreign, may be served: 1. Upon the president or vice-president or other head of the corporation. In the absence of such head: 2. Upon the cashier, or treasurer, or secretary, or general manager; or, in the absence of all of the above: 3. Upon any director of such company; or, in the absence of all of the above: 4. Upon any business agent resident in the county in which the action is brought; 5. If a foreign corporation shall have none of the foregoing officers or agents in this state, service may be made upon any agent transacting business for it in this state.

---



**Laws, 1907, c. 5717. An Act to prescribe the Terms and Conditions upon which Foreign Corporations for Profit may transact Business, or acquire, hold, or dispose of Property in this State.**

**Sec. 1. Articles of incorporation to be filed.** That no foreign corporation shall transact business or acquire, hold or dispose of property in this state until it shall have filed in the office of the secretary of state a duly authenticated copy of its charter or articles of incorporation, and shall have received from him a permit to transact business in this state.

**Sec. 2. Permit. Fees.** Upon the filing of such copy, the secretary of state shall, if the objects of the corporation are such as are not prohibited by the laws of this state, issue a permit allowing such corporation to transact business in this state, but he shall not deliver such permit to the corporation until he shall have received from it for the use of the state a sum equal to that which the said corporation would have been required to pay as a charter fee if it had been incorporated under the laws of this state. The fee of the secretary of state for issuing the permit shall be five dollars.

**Sec. 3. Amendments of charters.** If the charter or articles of incorporation of any foreign corporation shall be amended after a permit has been issued to it under the provisions of this act, such corporation shall, within thirty days thereafter, file a duly authenticated copy of the amendment in the office of the secretary of state, who shall issue to the corporation a certificate of the filing; but if the amendment is one increasing the capital stock, he shall not deliver the certificate until he shall have received from the corporation for the use of the state a sum equal to that which such corporation would have been required to pay if it had been a corporation increasing its capital stock under the laws of this state. If any such corporation shall fail to file any amendment and to make the payment aforesaid within the said thirty days, its permit shall be deemed to be revoked until the provisions of this section shall be complied with. The fee of the secretary of state for granting the certificate shall be two dollars.

**Sec. 4. Effect on contracts.** Every contract made by or on behalf of any foreign corporation affecting its liability or relating to property within the state before it shall have complied with the provisions of this act shall be void on its behalf and on behalf of its assigns, but shall be enforceable against it or them.

**Sec. 5. Application of act.** This act shall be deemed to apply to foreign building and loan associations, foreign insurance companies, foreign surety companies, and all other foreign corporations which now are or hereafter may be required to obtain other certificates of authority to transact business in this state, and to impose an additional requirement upon them, as well as to all other foreign corporations except those which are excepted by its terms from the operation of this act.

**Sec. 6. Exceptions.** This act shall not apply to any foreign corporation whatever transacting business in this state at the time this act shall take effect; Provided that any such foreign corporation hereafter increasing its capital stock shall comply with the provisions of section 3 in relation thereto.

**Sec. 7. Definition of foreign corporation.** A foreign corporation is defined to be a corporation incorporated by or under the laws of any other state or territory or of any other country.

**Sec. 8. Penalties.** Any foreign corporation which shall violate the provisions of sections 1 or 3 shall, upon conviction, be fined not more than one thousand dollars for the first offense, and not more than five thousand dollars for each subsequent offense, and any officer or agent of any foreign corporation who shall violate the provisions of sections 1 or 3, shall, upon conviction, be punished by a fine of not more than two thousand dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment.

## Georgia.

### Code, 1911.

**Sec. 2203. Foreign corporations.** Corporations created by other states or foreign governments are recognized in our courts only by comity, and so long as the same comity is extended in their courts to corporations created by this state.

**Sec. 2204. What powers they may not exercise.** No foreign corporation shall exercise within this state any corporate powers or privileges which by the constitution or laws of Georgia are denied or prohibited to corporations created by this state, or the exercise of which is contrary to the public policy of this state, anything in the charter or corporate powers of the foreign corporation to the contrary notwithstanding.

**Sec. 2205. Penalty.** Whenever any foreign corporation shall exercise or attempt to exercise within this state any corporate power or privilege denied or prohibited to corporations created by this state by the Constitution or laws of this state, or contrary to the public policy of this state, it shall be the duty of the courts to declare said corporate powers or privileges invalid and of no force or effect within this state, and to restrain or prohibit, by appropriate process, order, or judgment, the exercise of said corporate powers or privileges, by said foreign corporation, at the instance of any party at interest, or at the instance of the attorney-general when the latter shall be directed by the governor to proceed to that end in the name of the state.

**Sec. 2206. Ownership of land by foreign corporation.** Any foreign corporation or corporations incorporated by the laws of any other state, and claiming to own lands in Georgia in quantity amounting to as much as five thousand acres, shall be incorporated by the laws of Georgia within twelve months after February 28th, 1877; and on their failing to do so, the state of Georgia will not consent to the said corporation owning the said lands so located in her territory. And any foreign corporation incorporated by the laws of other states, who shall thereafter claim to own land in the state of Georgia in quantity amounting to five thousand acres or upwards, shall become incorporated by the laws of the state of Georgia, and in default thereof, Georgia will not consent that said foreign corporation shall own said lands in her territory; and no foreign corporation incorporated by the laws of another state shall own more than five thousand acres of land except upon the condition of becoming a corporation under the laws of Georgia; Provided, that this section shall not apply to any foreign corporations, or any corporation incorporated by the laws of any other state, engaged in the business of lending money on real estate security, nor to any such corporation holding a lien upon real estate to secure the payment of any debt, when said corporation, in order to prevent loss, is compelled to become the purchaser of lands covered by deed or mortgage to secure a loan: And provided, however, that the benefits and privileges of the foregoing proviso shall not apply to any foreign corporation which does or may lend money in this state at a greater rate of interest than eight per cent. per annum. In estimating the amount of interest charged, there shall be included any and all commissions or fees which may be paid to said company or its duly authorized agents.

**Sec. 2207. Charter of foreign corporation, how far binding here.** Where a foreign corporation does business in this state and relies upon provisions in its charter different from those imposed by the law of this state under similar circumstances it must show that the opposite party had notice of such provisions at the time the contract was made.

**Sec. 2209. Returns of corporations.** It is the duty of all corporations, except banks doing business in this state whether incorporated by the legislature of this state, by the secretary of state, or by the judgment of the superior court, or of any foreign corporation doing business in this state, to make a return, annually, through the president or general manager on or by the first day of November, embracing the following information: 1. The name of the company; 2. When incorporated; 3. By what authority incorporated; 4. Where incorporated; 5. The amount of capital stock of said corporation; 6. The business of the corporation; 7. Its principal office.

**Sec. 5072. Foreign incorporations subject to attachment.** Attachments may issue against incorporations not incorporated by the laws of this state, who are

transacting business within the state, under the same rules and regulations as are by this code prescribed in relation to issuing attachments and garnishments in other cases.

**Sec. 5285. Service on attorney or agent of non-resident corporation.** If the garnishee be a non-resident corporation, service of notice of traverse upon any duly authorized agent or the attorney of record of such corporation shall be sufficient.

## Hawaii.

### Rev. Laws, 1905.

**Sec. 2623. Must file papers.** Every corporation or incorporated company formed or organized under the laws of any foreign state, which may be desirous of carrying on business in this territory or of taking, holding, and conveying real estate therein, shall file in the office of the treasurer of the territory: 1. A certified copy of the charter or act of incorporation of such corporation or company; 2. The names of the officers thereof; 3. The name of some person upon whom legal notices and process from the courts of this territory may be served; 4. A certified copy of the by-laws of such corporation or company.

**Sec. 2624. Powers and liabilities.** Every such corporation or company, on complying with the provisions of section 2623, and paying to the treasurer a fee of fifty dollars, shall, subject to the provisions of section 2629 have the same powers and privileges, and be subject to the same disabilities as are by law conferred on corporations constituted under the laws of this territory, and shall, for the purposes for which they shall be constituted, have full power to hold, take and convey by way of sale, mortgage or otherwise, real, personal and mixed estate in this territory. Provided always that the purposes for which such corporation or company shall be constituted shall not be repugnant to or in conflict with any law of this territory. Provided, further, that nothing herein contained, shall be construed to give any such corporation or company any of the special powers conferred by law upon railroad or banking corporations constituted under the laws of this territory.

**Sec. 2625. Annual license.** No foreign corporation, except foreign insurance companies, which does not invest and use all its capital in this territory, shall have an office or offices in this territory for the use of its officers, stockholders, agents, or employees, unless it shall first have obtained from the treasurer an annual license to do so; and for said license, every such corporation shall pay into the treasury of the territory, for the use of the territory, annually, the sum of one hundred dollars, and the treasurer shall not issue a license to any corporation until said license fee shall have been paid.

The treasurer is hereby authorized to settle and have collected an account against any company violating the provisions of this section for the amount of such license fee, together with a penalty of fifty per cent. for failure to pay the same. Provided, that no license shall be necessary for any corporation engaged solely in the business of foreign or interstate commerce, or while solely employed by the government of the United States.

**Sec. 2626. Penalty for non-compliance with statutes.** Every person acting as agent, or assuming to act as agent of any foreign corporation which has failed to comply with any of the statutes regarding foreign corporations, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars; or by imprisonment for not more than six months, or by both such fine and imprisonment.

Every foreign corporation failing to comply with any of the statutes regarding foreign corporations shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars; which said fine shall be in addition to all fees, licenses, and penalties in this chapter provided; and shall be denied the benefit of the laws of the territory, particularly the statute limiting the time for commencement of civil actions or of criminal actions, and shall not be entitled to sue, plead, or appear, except as hereinbelow provided in any court of this territory, for any cause of action whatever, while

such neglect or refusal continues; provided, however, that the court may grant, in its discretion, additional time within which to comply with the statutes when it shall appear that said corporation has a meritorious defense to any action brought against it.

**Sec. 2627. Annual exhibit.** Every such corporation or company carrying on business in the territory of Hawaii shall on the first day of July of each year, file with the treasurer, a statement of all matters which are or may be required by law to be filed by Hawaiian corporations.

**Sec. 2628. Examination by treasurer.** The said treasurer shall have power at any time either by himself or by one or more commissioners appointed by him, to call for the production of the books and papers of any foreign corporation doing business in the territory of Hawaii, and to examine its officers, members, and others touching its affairs, under oath; and the said treasurer may, in his discretion, lay before the governor and also publish the said annual reports and statement of such examination.

**Sec. 2629. Procedure to compel examination.** In case any such corporation shall refuse or fail to present such annual exhibit of its affairs to the treasurer, or to produce its books and papers upon the request of the treasurer, or of the commissioner or commissioners appointed by him, or in case any of the officers or members of such corporations shall refuse to be examined on oath touching the affairs of the same, the treasurer or the commissioner or commissioners may apply to a circuit judge at chambers for an order to compel the production of such books and papers, or the examination of such officers and members thereof, and the judge may enforce obedience to such order as in the case of its ordinary decrees and orders; and such corporation shall be denied the benefit of the laws of the territory, particularly the statute limiting the time for the commencement of civil actions, and shall not be entitled to sue in any court of the territory for any cause of action whatever, while such neglect or refusal continues.

---

## **Acts, 1909, No. 43. An Act to provide for Service on Corporations.**

**Sec. 1.** Service of any notice or process authorized by law issued against any corporation, whether domestic or foreign, by any magistrate, court, judicial or administrative officer, or board, may be made in the manner provided by law upon any officer or director of such corporation who shall be found within the jurisdiction of such magistrate, court, officer, or board, and in default of finding such officer or director, upon the manager or superintendent of such corporation or any person who shall be found in charge of the property, business, or office of such corporation, within such jurisdiction.

Provided, that if no officer, director, manager, superintendent, or other person in charge of the property, business or office of such corporation can be found within the territory, and in case such corporation, if a foreign corporation, shall have neglected to file with the officer specified in section 2623 of the Revised Laws the name of a person upon whom legal notice and process from the courts of the territory may be served, and likewise in the event that the person so named shall not be found within the territory, such service may be made upon such corporation by filing with the treasurer of the territory, or in his absence, with the registrar of public accounts, a copy of such notice, or process, certified to be such under the seal of any court of record, or by the magistrate, or by the chairman, or president of such board, or by the officer issuing the same, and such filing shall be deemed service upon such corporation thirty days after such filing, and shall authorize such magistrate, board or officer to proceed in all respects as in the case of service personally made upon an individual.

**Sec. 2.** Nothing in this act shall be construed to prevent service upon foreign corporations in the manner contemplated by section 2623 of the Revised Laws.

---

## Idaho.

### Constitution.

#### Article XI. Corporations. Public and private.

**Sec. 10. Regulation of foreign corporations.** No foreign corporation shall do any business in this state without having one or more known places of business, and, an authorized agent or agents in the same, upon whom process may be served, and no company or corporation formed under the laws of any other country, state, or territory, shall have or be allowed to exercise or enjoy, within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of this state.

#### Rev. Codes, 1908.

**Sec. 2784. Annual reports.** Every corporation organized or formed, under, by, or pursuant to the laws of this state, whether now existing or hereafter created, and every foreign corporation, joint stock company, or association now doing business in the state, or that may hereafter do business in this state, except fire, marine, fire and marine, life, accident, life and accident, surety companies, and mining corporations which do not own productive mines, and every telephone or irrigation corporation, incorporated canals, laterals, and drainage ditches, operated on the co-operative plan solely, and not conducted and operated wholly or in part for revenue purposes, shall, during the month of June of each year and on or before the first day of July of each year, furnish to the secretary of state and the county recorder of every county in the state where such corporation is doing business, upon blanks to be supplied by him, a correct statement sworn to by one of the officers of the corporation, or managing agent or authorized attorney in fact in this state of any foreign corporation, joint stock company, or association before an officer duly authorized to administer oaths, setting forth the name of the corporation, joint stock company, or association, the location of its principal office, the names of the president, secretary, and treasurer, with the post office address of each, date of annual election of directors and officers of such corporation, joint stock company, or association, the amount of authorized capital stock, the number of shares, the par value of each share, the amount of capital stock subscribed, the amount of capital stock issued and the amount of capital stock paid up. Every foreign corporation, joint stock company, or association shall include in such statement the names and post office address of its managing agent and attorneys in fact in this state.

**Sec. 2792. Filing of articles and designation of agent.** Every corporation not created under the laws of this state must, before doing business in this state, file with the county recorder of the county in this state in which is designated its principal place of business in this state, a copy of the articles of incorporation of said corporation, duly certified to by the secretary of state of the state in which said corporation was organized, and a copy of such articles of incorporation duly certified by such county recorder, with the secretary of state, paying to the latter the same fees as are provided by law to be paid for filing original articles of incorporation. Such corporation must also within three months from the time of commencement to do business in this state, designate some person in the county in which the principal place of business of such corporation in the state is conducted, upon whom process issued by authority of or under any law of this state may be served, and within the time aforesaid must file such designation in the office of the secretary of state, and in the office of the clerk of the district court for such county and a copy of such designation certified by either of said officers, must be evidence of such appointment. It is lawful to serve on such person so designated any process issued as aforesaid, and such service must be deemed a valid service thereof. Such notice and designation of agent on whom process may be served shall run from the time of filing the same as herein provided, until his successor is appointed by such filing, or said office becomes vacant by resignation filed by such agent in the office in which his appointment is filed, or by his death, or removal from such

county, and in case of such vacancy said corporation shall, within sixty days thereafter refill said office as herein provided.

No contract or agreement made in the name of, or for the use or benefit of, such corporation prior to the making of such filings as first herein provided, can be sued upon or enforced in any court of this state by such corporation. Such corporation cannot take or hold title to any realty within this state prior to making such filings, and any pretended deed or conveyance of real estate to such corporation prior to such filings shall be absolutely null and void. Any and all officers, agents, and representatives of said corporation, or persons claiming to be officers or agents of the same, who shall make or attempt to make any contract or agreement, or contract any indebtedness, in the name of such corporation, or for its use and benefit, before such original filings are made, or while such corporation is in default upon filing a reappointment as hereby provided, shall be jointly and severally, personally liable upon and for all such contracts and agreements as principal contractors.

Every such corporation which fails to comply with the provisions of this section shall be denied the benefit of the statutes of the state limiting the time for the commencement of civil actions, and any limitations in such statutes shall only run in favor of any such corporation during such time as such person duly designated, as aforesaid, upon whom such service can be made, shall be within the state: Provided, that foreign corporations complying with the provisions of this section shall have all the rights and privileges of like domestic corporations, including the right to exercise the right of eminent domain, and shall be subject to the laws of the state applicable to like domestic corporations.

**Sec. 4144. Service on corporations.** — — — — 2. If the suit is against a foreign corporation or a non-resident joint stock company, or association doing business and having a managing or business agent, cashier, or secretary within this state, to such agent, cashier, or secretary, or to any station, ticket, or other agent of said corporation, transacting business thereof, in the county where the action is commenced, and if there is no such agent in said county then service may be made upon any such agent in any other county; 3. And wherever any foreign corporation, non-resident joint stock company, or association shall not have any designated person actually residing in the county in which said corporation or joint stock company shall be doing business in this state upon whom process can be served as provided in section 2792 of these (the revised codes of Idaho), or when the agent of such company appointed as provided in said section shall have removed from, or ceased to be a resident or cannot after due diligence be found within the county where the action arose, or conceals himself in order to avoid the service of process, then service of such summons shall be made upon the county auditor of said county with like effect as though said service were made upon an agent or person appointed and designated as provided in section 2792 of these codes, and it shall be the duty of such auditor to forward a copy of any such summons so served on him, by registered mail, to the principal business office of such corporation, in this state if the address of such office be known to him, but no failure on the part of such auditor to mail such copy of summons shall effect the validity of the service thereof.

## Indiana.

**Acts, 1907, p. 286. An Act entitled an Act to regulate the Admission of Foreign Corporations for Profit, to do Business in the State of Indiana, repealing all Laws and Parts of Laws in Conflict therewith, (March 9, 1907).<sup>1)</sup>**

**Sec. 1. Foreign corporations, admission to state.** Before any foreign corporation for profit shall be permitted or allowed to transact business or exercise any of its corporate powers in the state of Indiana, other than insurance companies, building and loan companies and surety companies, they shall be required to comply with the provisions of this act and shall be subject to all the regulations prescribed

<sup>1)</sup> Burns' Ann. St. 1908, secs. 4085—4098.

herein, as well as all other regulations, limitations, and restrictions applying to corporations of like character organized under the laws of this state.

**Sec. 2. Application to secretary of state. Contents.** When any corporation organized under the laws of any foreign state, territory, or country, for the transaction of business for profit, desires admission into the state of Indiana, for the purpose of transacting business or exercising its corporate powers or franchise, it shall make application to the secretary of state, signed and sworn to by the president and secretary, stating what business such corporation proposes to pursue in Indiana under its articles of incorporation; the amount of capital stock of such corporation; whether it is transacting or it is intended that it shall transact business in any other state, territory, or country; the proportion of its business, based upon its total business for the year immediately preceding, carried on in the state of Indiana, or if a newly organized corporation, then the proportion, as nearly as can be determined by estimate, to be transacted in Indiana; the amount paid in upon its capital stock; what property and assets and an estimate of the value thereof to be employed in the business of said corporation in the state of Indiana; if any of its capital stock has not been paid in what disposition is to be made thereof; the names of the president, secretary, and directors of said corporation and their residences; where its principal office in Indiana will be located, and the name and address of some agent or attorney in fact upon whom service of process can be had in all suits commenced in this state, and such corporation shall file with the secretary of state a copy of its charter or articles of incorporation, or in case such corporation is incorporated merely by a certificate, then a copy of its certificate of incorporation, duly certified and authenticated by the officer who issued the original, or by the recorder or registrar of the office in which said original charter, articles, or certificate may have been recorded.

**Sec. 3. Form of application. Interrogatories.** The secretary of state shall have the power to prescribe the form of such application and may, in addition thereto, propound such interrogatory or interrogatories to the applicants respecting the character of business in which said corporation proposes to engage in Indiana, the amount of its capital stock, the proportion of business in this state and the proportion and location of its business in other states, territories, or countries, and such interrogatories shall be answered under oath, and the interrogatories and answers thereto shall be filed with said application and with the certified copy of its articles or certificate and shall be and operate as a limitation upon the powers of said corporation to transact business in the state of Indiana. Such application shall contain an agreement and stipulation by said corporation that it will not transfer, or cause to be transferred, from any court of this state, to any court of the United States, save by regular course of appeal after trial in the state courts, any action commenced by or against said corporation in any court of this state, by or against any citizen or resident thereof, and that it will not commence in any court of the United States, in this state, on any contract made in this state or liability accrued therein, any suit or action against any citizen or resident of the state of Indiana.

**Sec. 4. Certificate of authority.** The secretary of state, upon the admission of such foreign corporation to do business in the state of Indiana, shall issue a certificate and shall state in such certificate of authority to do business issued by him the powers and objects of said corporation which may be exercised in this state, and no corporation shall by this certificate of the secretary of state be authorized to transact any business in this state for the transaction of which a corporation cannot be organized under the laws of Indiana.

**Sec. 5. Location and agent.** Each foreign corporation admitted to do business in this state under the provisions of this act shall constantly keep on file in the office of the secretary of state an affidavit of the president and secretary showing the location of its principal business office in the state of Indiana, and the name of some person who may be found at said office for the purpose of accepting service upon said corporation in all suits that may be commenced against it, and as often as said corporation shall change its location, or its agent or attorney in fact for receiving and accepting service, a new affidavit shall be filed to take the place of all such affidavits previously filed by the officers of said corporation.

**Sec. 5½. Annual Report. Contents. Increase.** Any foreign corporation heretofore or hereafter admitted to do business in the state of Indiana shall be required to make reports to the secretary of state, within thirty days after the first day of

January of each year, stating under oath the then name of the corporation; its total capital stock; the proportion of its business in this state; the value of its property and assets in this state and the proportion thereof as compared with its total property and assets; the character of business being transacted in this state; the location of its office; the name of its agent or attorney in fact; and the names of its president, secretary, and directors and their residences. Whenever such annual report shall show an increase of five thousand dollars or more in the proportion in this state the corporation shall pay an additional fee on such increase.

**Sec. 6. Real estate rights. Mortgages.** No foreign corporation admitted to do business in this state under the provisions of this act shall hold any real estate except such as may be necessary for the proper carrying on of its legitimate business.

**Sec. 8. Act construed.** Nothing in this act shall be taken or construed into releasing foreign loan, building and loan, or bond investment companies, or other corporations on the partial payment or installment plan, from any provisions of law requiring them to make a deposit of money with a proper officer of this state to protect from loss the citizens of this state who may do business with such loan, building and loan or bond investment companies or other corporations, nor to authorize the admission to do business in this state of any foreign loan, building and loan, bond investment, surety or insurance company, nor shall this act be construed as a grant of power to any corporation admitted hereunder, but as a limitation upon interstate comity.

**Sec. 9. Penalties. Prosecutions.** Every foreign corporation amenable to the provisions of this act, which shall neglect or fail to comply with any of the provisions of the same, as herein provided, shall be subject to a penalty of not less than one thousand dollars nor exceeding ten thousand dollars, to be recovered before any court of competent jurisdiction, and it is hereby made the duty of the secretary of state, as he may be advised or may ascertain that any corporation is doing business in contravention of this act, to report such fact to the attorney-general, and it shall be the attorney-general's duty and the duty of the prosecuting attorney of the proper county to bring such action at law as shall be necessary for the recovery of the penalties imposed hereby, and in addition to such penalty, if after this act shall take effect any foreign corporation shall fail to comply herewith, no suit may be maintained either at law or in equity upon any claim, legal or equitable, whether arising out of contract or tort, in any court in this state.

**Sec. 10. Exceptions.** This act shall not be applicable to or in any manner affect, any corporation of another state which has acquired or constructed, and is now operating a railroad or street or interurban street railroad, or is acting or may act as trustee under any mortgage or deed of trust for railroads or street or interurban street railroad companies of this or any other state.

**Sec. 11. Other regulating acts.** This act shall not be construed to repeal any law now in force regulating the admission into this state of any insurance, surety, building and loan, railroad, telephone, or telegraph corporation, but the provisions of this act shall be construed to be additional to any provisions regulating the admission of such foreign corporation to do business in the state of Indiana.

**Sec. 12. Names.** No foreign corporation having the same or strikingly similar name as any existing Indiana corporation, or having the same or strikingly similar name as any foreign corporation previously admitted to do business in this state, shall be admitted to do business in this state under such name.

---

### Burns' Ann. St. 1908.

**Sec. 4099. Consent to be sued here.** Said agents shall procure from such corporations, and file with the clerk of the circuit court of the county where they propose doing business, before commencing the duties thereof, a duly authenticated order, resolution, or other sufficient authority of the board of directors or managers of such corporations, authorizing citizens or residents of this state having a claim or demand against such corporation arising out of any transaction in this state with such agents, to sue for and maintain an action in respect to the same in any court of this state of competent jurisdiction, and further authorizing service of process in such action on such agent to be valid service on such corporation, and that such service shall authorize judgment and all other proceedings against such corporation.



**Sec. 4100. Service on agent good.** The service of process on such agents, in actions commenced against such corporation, shall be deemed a service on the corporation, and shall authorize the same proceedings as in other cases.

**Sec. 4101. Pre-requisite to business.** Such foreign corporations shall not enforce, in any court of this state, any contracts made by their agents or by persons assuming to act as their agents, before a compliance by such agents or persons acting as such with the provisions of sections 1 and 2 of this act.

**Sec. 4102. "Agent" defined.** Any person who shall, directly or indirectly, receive or transmit money or other valuable thing to or for the use of such corporations, or who shall in any manner make, or cause to be made, any contract, or transact any business for or on account of any such foreign corporation, shall be deemed an agent of such corporation, and be subject to the provisions of this act relating to agents of foreign corporations.

**Sec. 4103. Who not agents.** The foregoing section shall not apply to persons acting as agents for foreign corporations for a special or temporary purpose or for purposes not within the ordinary business of such corporations, nor shall it apply to attorneys at law, as such.

**Sec. 4104. Penalty on agent.** Any person acting as agent of a foreign corporation as aforesaid, neglecting or refusing to comply with the foregoing provisions as to agents, shall, upon presentment or indictment, be fined in any sum not less than fifty dollars.

**Sec. 4105. Forfeiture.** Every foreign corporation now doing or transacting or that shall hereafter do or transact, any business in this state, or acquire any right, title, interest in, or lien upon real estate in this state that shall transfer or cause to be transferred from any court of this state to any court of the United States, save by regular course of appeal, after trial in the state courts, any action commenced by or against such corporation in any court of this state by or against any citizen or resident thereof; or that shall commence in any court of the United States in this state, on any contract made in this state or liability accrued therein, any suit or action against any citizen or resident of the state of Indiana, — shall thereby forfeit all right and authority to do or transact business in this state or hold real property or liens thereon, and all contracts between such corporations and citizens or residents of this state, made after the passage of this act, shall be rendered void as in favor of such corporation, but enforceable by such citizen at his election.

**Sec. 4106. Conditions precedent.** The provisions of this act are hereby made conditions upon which such corporations may be authorized to do business in this state or hold titles to or liens on real estate therein.

## Iowa.

### Ann. Code, 1907.

**Sec. 1637. Foreign corporations; filing articles; process.** Any corporation for pecuniary profit, other than for carrying on mercantile or manufacturing business as clearly defined and restricted by its articles of incorporation, organized under the laws of another state, or of any territory of the United States, or of any foreign country, which has transacted business in the state of Iowa since the first day of September, 1886, or desires hereafter to transact business in this state, and which has not a permit to do such business, shall file with the secretary of state a certified copy of its articles of incorporation, duly attested by the secretary of state or other state officer in whose office the original articles were filed, accompanied by a resolution of its board of directors or stockholders authorizing the filing thereof, and also authorizing service of process to be made upon any of its officers or agents in this state engaged in transacting its business, and requesting the issuance to such corporation of a permit to transact business in this state; said application to contain a stipulation that such permit shall be subject to the provisions of this chapter. Before such permit is issued, the said corporation shall pay to the secretary of state the same fee required for the organization of corporations in this state, and if the capital of such corporation is increased, it shall pay the same fee as is in such event required of corporations organized under the law of this state. Any

corporation transacting business in this state prior to the first day of September, 1886, shall be exempt from the payment of the fees required under the provisions of this section. The secretary of state shall thereupon issue to such corporation a permit, in such form as he may prescribe, for the transaction of the business of such corporation, and upon the receipt of such permit said corporation shall be permitted and authorized to conduct and carry on its business in this state. Nothing in this section shall be construed to prevent any foreign corporation from buying, selling, and otherwise dealing in notes, bonds, mortgages, and other securities.

**Sec. 1638. Permit.** No foreign corporation which has not in good faith complied with the provisions of this chapter and taken out a permit shall possess the right to exercise the power of eminent domain, or exercise any of the rights and privileges conferred upon corporations, until it has so complied herewith and taken out such permit.

**Sec. 1639. Penalty.** Any foreign corporation that shall carry on its business in violation of the provisions of this chapter in the state of Iowa, by its officers, agents, or otherwise, without having complied with this statute and taken out and having a valid permit, shall forfeit and pay to the state, for each and every day in which such business is transacted and carried on, the sum of one hundred dollars, to be recovered by suit in any court having jurisdiction; and any agent, officer, or employe who shall knowingly act or transact such business for such corporation, when it has no valid permit as provided herein, shall be guilty of a misdemeanor, and for such offense shall be fined not to exceed one hundred dollars, or be imprisoned in the county jail not to exceed thirty days, or by both such fine and imprisonment, and pay all costs of prosecution. Nothing contained in this chapter shall relieve any person, company, corporation, association, or partnership from the performance of any duty or obligation now enjoined upon or required of it, or from the payment of any penalty or liability created by the statutes heretofore in force, and all foreign corporations, and the officers and agents thereof, doing business in this state shall be subject to all the liabilities, restrictions, and duties that are or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers.

**Sec. 1640. Dissolution. Receiver.** Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the state of Iowa. An action therefor may be instituted by the attorney general in the name of the state, reserving, however, to the stockholders and creditors all rights now possessed by them.

**Sec. 1641. Ownership of property.** Corporations organized in any foreign country or corporations organized in this country, the stock of which is owned in whole or in part by non-resident aliens, shall have the same rights, powers, and privileges with regard to the purchase and ownership of real estate in this state as are granted to non-resident aliens in section twenty-eight hundred and ninety (2890) of the code.

Corporations organized under the laws of another state, territory or country desiring to file their articles under the provisions of section 1637 are required to conform, on the filing of the articles, to the laws of Iowa as they relate to domestic corporations in so far as such laws relate to the fees required by section 1610; the limit of the amount of authorized indebtedness, section 1611; the duration of the corporate existence, section 1618; and the general nature of the business to be transacted must conform to the requirements of section 1610. Such corporations are also required to make and file the reports required by Laws, 1909, c. 105.

## **Laws, 1909, c. 105. An Act requiring all Corporations doing Business within the State to make an annual Report and pay an annual License Fee.**

**Sec. 1. Annual report; what to contain.** Any corporation, organized under the laws of this state or under the laws of any other state, territory, or any foreign country, which has complied with the laws of this state relating to the organization of corporations and secured a certificate of incorporation or permit to transact business in this state, and any corporation that may hereafter organize and become incorporated under the laws of this state, and shall secure a certificate of incorporation or permit to transact business in this state, and any foreign corporation

that may hereafter comply with the laws of this state relating to foreign corporations and secure a permit to transact business within this state, shall, between the first day of July and the first day of August of each year, make an annual report to the secretary of state, said report to be in such form as he may prescribe, upon a blank to be prepared by him for that purpose, and such report shall contain the following information: 1. Name and postoffice address of the corporation; 2. The amount of capital stock authorized; 3. The amount of capital stock actually issued and outstanding; 4. Par value of such stock, designating whether preferred or common stock, and amount of each kind; 5. The names and postoffice addresses of its officers and directors and whether any change of place of business has been made during the year previous to making said report.

**Sec. 2. Report signed and sworn to. Annual permit.** The report required by section one (1) of this act shall be signed and sworn to by an officer of the corporation and when filed with the secretary of state shall be accompanied by the fee required in section three (3) hereof and also by an application for a permit to be issued to said corporation under the provisions of this act; said permit to be in such form as the secretary of state may prescribe and which shall be in force and effect for one year from and after the first day of July of the year in which it is issued, except that where the term of a corporate existence shall expire in less than a year from the first day of July aforesaid, then said permit shall be issued for such unexpired term only, provided, however, that any corporation organized under the laws of this state, and any foreign corporation filing a certified copy of its articles of incorporation after the first day of April of any year, shall be exempt from the provisions of this act for the period ending one year from the first day of July following, after which it shall be subject to all the provisions of this act.

## Kansas.

**Laws, 1907, c. 140. Relating to Private Corporations. An Act relating to Private Corporations, and amendatory of the Provisions of certain Paragraphs of Chapter 23, General Statutes of 1901, and repealing paragraphs Nos. 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1283, 1284 and 1311 of the General Statutes of 1901, and Chapter 150, Laws of 1903.**

**Sec. 13. Foreign corporations.** Any corporation organized under the laws of any other state, territory, or foreign country, and seeking to do business in this state, shall make application to the State Charter Board, upon blank forms supplied by the secretary of state, for authority to engage in business in this state as a foreign corporation. Such application shall set forth: 1. A certified copy of its charter or articles of incorporation; 2. The place where the principal office of the corporation is located. 3. The place where the principal office or place of business in this state is to be located; 4. The full nature and character of the business the corporation proposes to conduct in this state; 5. The name and address of each of the officers, trustees, or directors of the corporation. 6. A detailed statement of the assets and liabilities of the corporation, which shall be subscribed and sworn to by the president and secretary of the corporation. 7. The written consent of the corporation, irrevocable, that actions may be commenced against it in the proper court of any county in this state in which a cause of action may arise or in which the plaintiff may reside by the service of process on the secretary of state, and stipulating and agreeing that such service shall be taken and held, in all courts, to be as valid and binding as if due service had been made upon the president and secretary of the corporation, and shall be executed by the president and secretary of the company and authenticated by the seal thereof, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees, or managers of the corporation authorizing the said secretary and president to execute the same.

**Sec. 14. Foreign corporations engaged in business in this state at the time of the passage of the act, to wit, chapter 10, Laws of 1898.** Section 17 of chapter 23, General Statutes of 1901, the same being section 3 of chapter 10, Laws of the Extra Session of 1898, is hereby amended to read as follows: Every foreign corporation now doing business in this state shall, within thirty days from the taking effect of this act, file with the secretary of state its written consent as above specified.

**Sec. 15. Power of charter board.** The state charter board, in passing upon the application of a foreign corporation, shall make special inquiry with reference to the solvency of such corporation, and for this purpose may require such information and evidence as they may deem proper. If they shall determine that the corporation is organized in accordance with the laws of the state, territory, or foreign country under which it is incorporated, that its capital is unimpaired, and that it is organized for a purpose for which a domestic corporation may be formed, the application shall be granted, and the approval of the charter board indorsed thereon, and, upon the payment of the fees provided by this act to be paid, the application shall be filed in the office of the secretary of state, and the secretary of state shall issue a certificate setting forth the fact that the application of the corporation has been approved by the charter board and that such corporation is authorized to engage in business in this state.

**Sec. 16. Actions, where brought.** An action against a corporation organized under the laws of any other state, territory, or foreign country, and doing business in this state, may be brought in the county where the cause of action arose or in which the plaintiff may reside. The summons shall be directed to the secretary of state, and shall require the defendant to answer by a certain day, not less than forty days nor more than sixty days from its date. Said summons shall be forthwith forwarded by the clerk of the court to the secretary of state, who shall immediately forward a copy thereof to the secretary of the corporation sued; and thereupon the secretary of state shall make return of said summons to the court whence it issued, showing the date of its receipt by him, the date of forwarding such copy, the name and address of the person to whom he forwarded said copy, and the costs for service and return thereof, which in each case shall be two dollars and fifty cents. Such return shall be under his hand and seal of office, and shall have the same force and effect as a due and sufficient return made by the sheriff on process directed to him. The secretary of state shall keep a suitable record-book, in which he shall docket every action commenced against a foreign corporation as aforesaid. This record shall show the court in which the suit is brought, the title of the case, the time when commenced, the date and manner of service, and the date of payment of the fee taxed as costs in the case.

**Sec. 17. Amendments.** Any corporation organized or existing under the provisions of this act may, within the limits of this act, amend its charter in any of its parts by the affirmative vote of two-thirds of the shares of the stock of such corporation, at a meeting of the stockholders called for the purpose, in conformity with the by-laws thereof.

**Sec. 21. Application fee.** Each application to the charter board for permission to organize a domestic corporation or to engage in business in this state as a foreign corporation shall be accompanied by a fee of twenty-five dollars, to be known as an application fee; provided, that corporations organized for religious, educational, or charitable purposes, having no capital stock, shall not be required to pay such fee.

**Sec. 22. Filing and recording fee.** Every corporation hereafter organized under the laws of this state and every foreign corporation that may be authorized by the charter board to engage in business in this state shall pay to the secretary of state a fee of two dollars and fifty cents, to be known as a filing and recording fee.

[Sec. 23. As amended by Act of February 3, 1911, relates to fees and taxation.]

**Sec. 27. Foreign corporations.** Any corporation organized under the laws of another state, territory, or foreign country, and authorized to do business in this state, shall be subject to the same provisions, judicial control, restrictions, and penalties, except as herein provided, as corporations organized under the laws of this state.

**Sec. 28. What constitutes doing business.** Every corporation organized under the laws of another state, territory, or foreign country that has an office or place of business within this state, or a distributing point herein, or that delivers its wares

or products to resident agents for sale, delivery, or distribution, shall be held to be doing business in this state within the meaning of this act.

**Sec. 29. Annual statement.** Every corporation for profit doing business in this state, except banking, insurance, and railroad corporations, shall file in the office of the secretary of state, during the month of February of each year, a statement of the condition of the corporation at the close of business on the 31st day of December next preceding the date of filing. The secretary of state shall prepare and furnish blank forms for such annual statements. The statement to be made by a domestic corporation shall set forth the following: 1. The authorized capital; 2. The paid-in capital; 3. The par value of the shares of the capital stock; 4. A complete and detailed statement of the assets and liabilities of the corporation; 5. A complete list of the stockholders, with the postoffice address of each and the number of shares held by each; 6. The names and addresses of the officers, trustees, or directors, and manager elected for the ensuing year. The annual statement to be filed by a foreign corporation shall set forth: The full corporate name of such corporation; the location of its principal office or place of business without this state; the location of its principal office or place of business within this state, if any it has; the names and addresses of its officers and directors; the amount of its authorized capital stock and the amount of each share; the amount of its capital stock subscribed; and the amount and general nature of its resources and liabilities, in a form to be prescribed by the charter board. Such statement shall be subscribed and sworn to by the president or general manager, and by the secretary of such corporation, and shall be made upon a blank furnished by the secretary of state. The fee for filing such report and making a certificate that the same has been made and is on file as aforesaid shall be one dollar. The secretary of state may at any time require a further or supplementary report under this section, which shall contain the same information and data as specified in the annual report herein required. The failure of any corporation to file the annual statement herein provided for within ninety days from the time provided for filing the same shall work the forfeiture of the charter of any corporation organized under the laws of this state, and the charter board may at any time thereafter declare the charter of such corporation forfeited; and, upon the declaration of any such forfeiture, it shall be the duty of the attorney-general to apply to the district Court of the proper county for the appointment of a receiver to close out the business of such corporation; and the failure of any foreign corporation to file such annual statement, as heretofore provided, shall work a forfeiture of its right or authority to do business in this state, and the charter board may at any time declare such forfeiture, and shall forthwith publish such declaration in the official state paper. No action shall be maintained or recovery had in any of the Courts of this state by any corporation doing business in this state without first obtaining the certificate of the secretary of state that the annual statements herein provided for have been filed as required by this act.

## Kentucky.

### Constitution.

**Sec. 202. Foreign corporations subject to laws relating to domestic corporations.** No corporation organized outside the limits of this state shall be allowed to transact business within the state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this commonwealth.

## Carroll's St. 1903.

**Sec. 555. Consolidation of corporations, how effected.** Any two or more corporations organized under this chapter, or the laws of this or any other state, may consolidate into a single corporation; the directors, or a majority of them, of such corporations as desire to consolidate may enter into an agreement signed by them, prescribing the terms and conditions of consolidation, the mode of carrying same into effect, and stating such other facts as are necessary to be set out in articles of incorporation as herein provided (except the facts required by subdivision 5, section 2,

hereof) as well as the manner of converting shares of the old corporation into the new, with such other details and provisions as are deemed necessary: Provided, that such consolidated corporations shall become and be a domestic corporation of this commonwealth for all purposes, and shall be subject to the jurisdiction of the courts of this state and to all laws of this state regulating corporations organized thereunder, and their law shall not be construed as altering or repealing any law regulating the taxation of bridges over streams forming the boundary line of this state.

Written notice of the intention to consolidate shall be mailed to the address of each stockholder of each corporation at least twenty days previous to entering into such agreement, and such notice shall be published at least two weeks in some newspaper printed and circulated in the county of its principal place of business, and the written consent of the owners of at least two-thirds of the capital stock of each corporation shall be necessary to the validity of such agreement.

**Sec. 570. Constitution, provisions of to be accepted.** No law shall be passed for the benefit of, or in the interest of, any corporation heretofore created or organized by or under the laws of this state or any other state, nor shall any corporation avail itself of the provisions of this chapter, unless such corporation shall have previously, by a resolution adopted by its board of directors and filed in the office of the secretary of this state, accepted the provisions of the constitution of this state; and such resolution, or a certified copy thereof, shall be evidence for and against such corporation.

**Sec. 571. Agent upon whom process may be executed to be located in state. Penalty.** All corporations except foreign insurance companies formed under the laws of this or any other state, and carrying on any business in this state, shall at all times have one or more known places of business in this state, and an authorized agent or agents thereat, upon whom process can be served; and it shall not be lawful for any corporation to carry on any business in this state, until it shall have filed in the office of the secretary of state a statement, signed by its president or secretary, giving the location of its office or offices in this state, and the name or names of its agent or agents thereat upon whom process can be served; and when any change is made in the location of its office or offices, or in its agent or agents, it shall at once file with the secretary of state a statement of such change; and the former agent shall remain agent for the purpose of service until statement of appointment of the new agent is filed; and if any corporation fails to comply with the requirements of this section, such corporation, and any agent or employe of such corporation, who shall transact, carry on, or conduct any business in this state, for it, shall be severally guilty of a misdemeanor, and fined not less than one hundred nor more than one thousand dollars for each offense.

**Sec. 572. Action; removal to or institution in federal court forbidden; penalty.** If any foreign corporation shall, without the consent of the adverse party, remove to a federal court any action pending against it in any court of this state, or institute an action against a citizen of this state in a federal court of this state, such action on the part of the corporation shall forfeit its right to transact or carry on any business in this state; and such corporation, and any officer, agent, or employe thereof, who shall thereafter transact or engage in any business or employment for such corporation in this state shall be severally guilty of a misdemeanor, and, upon indictment and conviction in the circuit court of any county in which such corporation, or any officer, agent, or employe thereof transacts or engages in any business, be fined for each offense not less than five hundred nor more than one thousand dollars.

**Sec. 576. Word "incorporated" to be used by certain corporations. Penalty.** Every corporation organized under the laws of this state, and every corporation doing business in this state, shall, in a conspicuous place, on its principal place or places of business, in letters sufficiently large to be easily read, have painted or printed the corporate name of such corporation, and immediately under the same, in like manner, shall be printed or painted the word "incorporated." And immediately under the name of such corporation, upon all printed or advertising matter used by such corporation, except railroad companies, banks, trust companies, insurance companies, and building and loan associations, shall appear in letters sufficiently large to be easily read, the word "incorporated." Any corporation which shall fail or refuse to comply with the provisions of this section shall be

subject to a fine of not less than one hundred dollars and not more than five hundred dollars.

**Sec. 4189g. Reports when to be made.** Domestic corporations hereafter incorporated, and foreign corporations hereafter becoming the owner of property or transacting business in this state, shall make such report to the auditor of public accounts in the manner provided in this article, on or before February first succeeding their incorporation or succeeding their becoming the owner of property, or transacting business, in this state; and shall make such report on or before said date annually thereafter. And, except as provided in section six (4189f) of this article, such corporations shall pay the annual license tax at the rate and in the proportion provided in section three (4189c); and in all respects be subject to all the provisions and penalties in this article contained and prescribed.

**Sec. 4189h. Penalty for false statements.** Any person who shall falsely make any affidavit herein required shall be guilty of false swearing and, upon conviction therefor, shall suffer the pains and penalties in such case made and provided. And any corporation which willfully violates the provisions of this article or any of such provisions, or willfully fails or neglects to perform any duty herein imposed upon it, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined any sum not less than fifty dollars nor more than one thousand dollars for each offense; the same to be recovered by penal action or by indictment in the circuit court of Franklin county; and every such judgment of conviction for failure to report or for failure to pay the annual license tax required, shall also provide that the right to be a corporation and to exercise the rights and franchises of a corporation in this state, shall be suspended until the fine and costs and all taxes and penalties due the state shall be paid or replevied, or the judgment superseded. Every corporation failing to pay its taxes as provided in this article within the time herein prescribed shall be deemed a delinquent, and a penalty of ten per cent. on the amount of such tax shall attach, and thereafter such tax shall bear interest at the rate of ten per cent. per annum, the same to be collected in the same manner and, by the same process as the tax is collected.

## Maryland.

### Pub. Gen. Laws, 1904, Art. 23.<sup>1)</sup>

**Sec. 65. Definition of foreign corporation.** The term, foreign corporation, as used in this article, shall mean every corporation, association, or organization, other than a national bank, which has been established, organized, or chartered under laws other than those of this state.

**Sec. 66. Subject to laws of state.** No foreign corporation shall engage or continue in any kind of business in this state, the transaction of which by domestic corporations is not permitted by the laws thereof. And every foreign corporation doing business in this state shall be deemed thereby to have assented to all the provisions of the laws thereof.

**Sec. 67. Suits.** Any person or corporation, whether a resident or a non-resident of this state, may sue any foreign corporation regularly doing business or regularly exercising any of its franchises herein for any cause of action. Such suit may be brought in any county or in the city of Baltimore, as the case may be, where its principal office in this state, named in the certificate provided for by the next succeeding section of this article, is located or where it regularly transacts business or exercises its franchise, or in a local action where the subject-matter thereof lies; and a corporation acting as surety may be sued wherever a similar corporation of this state could be sued under the provisions of section 62 of this article. Process may be directed to the sheriff, constable or other proper officer of any county or of the city of Baltimore, returnable to the clerk of the court out of which, or to the justice of the peace by which the same was issued, and may be served as follows: If such corporation has a resident agent authorized and prepared to accept service as provided by section 68 of this article, such process shall be served upon him. If the corporation has no resident agent so authorized and prepared, process may

<sup>1)</sup> As amended by Laws, 1908, c. 475.

be served (subject to the special provision for insurance companies and fraternal beneficiary societies, orders or associations hereinafter mentioned) upon any president, manager, director, ticket agent, or officer of the corporation, or upon any agent or other person in its service. In all cases, however, a copy of the process shall be left with the person upon whom it is served; and where process is served upon any person other than the resident agent, president, director, or other officer of the corporation, a copy of the process shall also be left at its principal office in this state, if there be one named as aforesaid. If any foreign corporation shall, after incurring liability in this state or after making any contract with a resident thereof, cease to do business or to have such resident agent or a president, director, manager, or other officer herein, then and in such case suit may be brought in the county or city in which the plaintiff resides and process may be served upon any person in this state who was last a resident agent, president, director, manager, or other officer of such corporation in this state; provided, however, that a copy of such process shall also be served on the president or some director of such foreign corporation wherever he may be found, and an affidavit of such service be made by the person serving the same (whether he be a resident or a non-resident of this state) before any officer authorized by the laws of this state to take the acknowledgment of deeds to be recorded therein. And the affidavit showing such service and the time thereof shall be returned to the court in which the suit against such foreign corporation is pending. Nothing herein shall prevent or affect the issue of attachments against foreign corporations as now or hereafter allowed by law.

**Sec. 68. Papers to be filed.** Every foreign corporation which has a usual office or place of business in this state, except insurance companies hereinafter provided for, but including any corporation which is engaged in this state permanently or temporarily, and with or without a usual place of business therein, in the construction, alteration, erection, or repair of any building, bridge, railroad, railway, or structure of any kind, shall, before doing business herein, file with the secretary of state, who shall record the same: 1. A certified copy of its charter or certificate of incorporation; 2. A certificate to be renewed annually before the first day of April in every year, subscribed and sworn to by its president, or treasurer, or a majority of its board of directors and accompanied by the annual fee of one dollar for recording such renewal, showing: a) the corporate name; b) the names and addresses of its president, treasurer, secretary, and the members of its board of directors; c) its principal office in this state and in the state of incorporation; d) the amount of its capital stock authorized and issued, the number and par value of the shares and the amount paid in thereon, and the names and addresses of its shareholders in this state, and the number of shares held by each, and the amount of its capital employed in this state; e) the name and address of its agent, resident in this state, and authorized to accept service of process upon it; and f) its willingness that so long as any liability remains outstanding against it in this state, the authority of such agent shall continue until a substitute is appointed and certified to the secretary of state. At the time of filing the original papers required by this section every such foreign corporation shall pay to the secretary of state for the use of the state, a fee of twenty-five dollars, upon receipt of which he shall issue to it the certificate setting forth that it is entitled to do business in this state, and for all such fees said secretary of state shall account quarterly to the comptroller and pay the same forthwith to the state treasurer for the use of the state, less the costs and expenses of recording the same.

**Sec. 69. Penalty.** Every officer of any such foreign corporation which fails to comply with the provisions of the preceding section, and every agent of such non-complying corporation, who transacts business for it in this state, shall be guilty of a misdemeanor and liable to a fine of two hundred dollars. Such failure shall not affect the validity of any contract made with such non-complying corporation, but no suit shall be maintained in any of the courts of this state by any such corporation until it has complied with the requirements of this article.

**Sec. 71. Penalty.** If the annual certificate and tax shall not be filed and paid as required by the preceding sections, then on the first day of November following, the comptroller shall place the tax bill in the hands of the attorney-general for collection by suit; and the officers and agents shall be liable to the penalty imposed by section 69 of this article.



**Sec. 72. Taxation.** Every foreign corporation doing business in this state, shall pay such taxes, fees, and charges as are now or may hereafter be prescribed by law; every foreign corporation, whatever the nature of its business, shall be subject to taxation upon its real and personal property situated in this state, as if the same belonged to a natural person; and nothing herein shall exempt from taxation the shares of a foreign corporation owned by residents of this state.

---

## Mississippi.

### Code, 1906.

---

**Sec. 914. Of foreign corporations.** Corporations which exist by the laws of any other state of the union, by the acts of congress, or the laws of any foreign country, may sue in this state by their corporate names, and they shall also be liable to be sued or proceeded against, by attachment or otherwise, as individual non-resident debtors may be sued or proceeded against. And the acts of the agents of any such foreign corporation shall have the same force and validity as the acts of agents of private persons; but such foreign corporations shall not do or commit any act in this state contrary to the laws or policy thereof, and shall not be allowed to recover on any contract made in violation of law or public policy.

**Sec. 915. Foreign corporations may be domesticated.** Every company or corporation incorporated under the laws of any other state, territory, or country, now doing business in this state, or hereafter desiring to do business in this state, and desiring to become a domestic corporation in this state, may file with the governor of the state a copy of its charter, or articles of incorporation or association, or in case such company or corporation is incorporated merely by a certificate, then a copy of its certificate of incorporation, duly authenticated and certified under the great seal of the state in which it was incorporated by charter or certificate.

**Sec. 916. Same; attorney-general and the governor to approve charter.** When said copy has been filed with the governor of this state, he shall first take the advice of the attorney-general of the state as to the constitutionality and legality of the provisions of such charter or articles of incorporation or association, and if the attorney-general shall certify to the governor that he finds nothing in said charter or articles of incorporation or association that are violative of the constitution or laws of this state, the governor of the state may approve the same, and he shall write his approval at the bottom of said charter or articles of incorporation or association or certificate of incorporation, and shall sign his name thereto, and shall cause the great seal of the state to be thereto affixed by the secretary of state; but the governor may require amendments or alterations to be made previous to signing same, or if deemed expedient by him he may withhold his approval entirely.

**Sec. 917. Same; charter to be recorded by secretary of state.** The secretary of state shall then cause all such charters or articles of incorporation or association, or certificate of incorporation, after he has received the same from the governor with his approval as provided in the preceding section, to be duly recorded in a book to be kept for that purpose, and shall cause to be issued to said corporation a copy of the charter or articles of incorporation or certificate so filed properly certified under the seal of his office, and a copy of such charter of incorporation or articles of incorporation, or certificate certified to by the secretary of the state, shall be taken by all courts of this state as evidence that the said corporation has complied with the provisions of this act, and is entitled to all the rights and benefits therein conferred, but said corporation shall pay to the secretary of state the same fees required of similar corporations formed under the laws of this state. Any corporation shall, upon compliance with this law, become to all intents and purposes a corporation of this state, and shall be entitled to all the rights and privileges and be subject to all the duties, obligations, restrictions, liabilities, limits, and penalties conferred and imposed by laws of this state upon similar corporations incorporated under the laws of this state.

**Sec. 918. Agent upon whom process to be served.** In any action against any foreign corporation becoming domesticated under the provisions of this act pro-

cess therein to be executed upon such corporations may be served upon the secretary of state, or any agent of such corporation of this state, and such service of process shall be as effectual and shall have the same force and effect as if it had been served upon the officers of domestic corporations, as provided by law, and the venue of such action shall be governed by the laws of this state relating to suits against corporations.

**Sec. 919. Foreign corporations subject to suit in this state.** Any corporation claiming existence under the laws of any other state or of any country foreign to the United States found doing business in this state, shall be subject to suit here to the same extent that corporations of this state are, by the laws thereof, liable to be sued by any resident of this state, and also so far as relates to any transaction had in whole or in part within this state, or any cause of action arising here. And any corporation having any transaction with persons or having any transaction concerning property situated in this state, through any agency whatever, acting for it within this state, shall be held to be doing business here within the meaning of this section.

**Sec. 920. Process may be served upon agent.** Process may be served upon any agent of said corporation found within the county where the suit is brought, no matter what character of agent such person may be; and in the absence of an agent it shall be sufficient to serve the process upon any person, if found within the county where the suit is brought, who represented the corporation at the time of the transaction out of which the suit arises took place, or if the agency through which the transaction was had be itself a corporation, then upon any agent of that corporation upon whom process might have been served if it were the defendant. The officer serving the process shall state the facts, upon whom issued, etc., in his return, and service of process so made shall be as effectual as if a corporation of this state were sued, and the process has been served as required by law; but in order that defendant corporation may also have effectual notice, it shall be the duty of the clerk to immediately mail a copy of the process to the home office of the corporation by registered letter, the postage and fees of which shall be taxed as other costs. The clerk shall file with the papers in the cause a certificate of the fact of such mailing, and make a minute thereof upon the docket, and no judgment shall be taken in the case until thirty days after the date of such mailing.

**Sec. 935. Foreign corporations to file charters.** Every company or corporation for profit incorporated under or by virtue of the laws of any government or of any other state or territory, now or hereafter doing business in this state, shall file in the office of the secretary of state a copy of its charter or articles of incorporation, or in case such company or corporation is incorporated merely by a certificate, then a copy of such certificate, duly certified and authenticated. Said charters, articles of incorporation, or certificates so to be filed shall be duly certified by the president, secretary, or secretaries or other chief executive of such corporation and by attaching thereto the corporate seal, and the secretary of state, upon the payment of the fees provided in this chapter, shall give certificate that said corporation has filed a copy of its charter or articles of incorporation as required by this chapter, and any foreign corporation which shall not file a copy of its charter or certificate or articles of incorporation as provided in this chapter shall be liable to a fine of not less than one hundred dollars. This section shall not apply to insurance companies, and is not to be taken or construed to change or modify the laws which are directly applicable to that character of corporations.

---

## Missouri.

### Ann. St. 1906.

**Sec. 1007. Corporations of other states may be sued, how.** Any corporation incorporated by any other state or country, and having property in this state, shall be liable to be sued, and the property of the same shall be subject to attachment, in the same manner as individuals, residents of other states or countries, and having property, are now liable to be sued, and their property subject to be attached.

**Sec. 1014. Foreign corporations shall report, what and when.** Every incorporated company, except railroad, building and loan, and insurance companies,

formed in any state, territory, or country other than the state of Missouri, doing business in and having an office, factory, or plant in this state, shall, annually, on the first day of July, report to the secretary of state the location of its principal office, factory, or plant in this state, the name of its principal officer in this state, the cash value of all of its personal property and of all of its real estate within this state on the first day of June immediately preceding, the amount of taxes, city, county, and state, paid by the corporation in this state, for the year preceding the date of the report.

**Sec. 1015. Failure to receive blanks no excuse for failure to report.** It is hereby made the duty of the officers of all corporations affected by this act to keep their books and accounts in such a manner as to enable them accurately to comply therewith. It shall also be the duty of such officers of corporations to promptly make and return the reports required by this article; and no corporation to which this article applies shall be held to be excused from making the report herein required by reason of failure to receive the blanks provided to be supplied by the secretary of state by section 1012 of this article.

**Sec. 1016. By whom reports shall be signed.** Each of said reports shall be signed and sworn to according to law, before an officer authorized to administer oaths, by the president or secretary, if the corporation be organized under the laws of this state, and by its principal officer in this state, if organized in any other state, territory, or country. And in case said corporation is in the hands of any assignee or receiver, then such report shall be signed and sworn to by said assignee or receiver.

**Sec. 1017. Penalty for failure to make report; duty of secretary of state.** Every incorporation to which this act applies, failing, within sixty days from July the 1st in each year, to make the report herein provided for, shall be subject to a fine of not less than fifty nor more than one thousand dollars for each offense, and each succeeding thirty days of such failure shall constitute a separate offense and be subject to a like fine, which said fines shall be cumulative, and one action may be maintained to recover one or more such fines, to be recovered before any court of competent jurisdiction. No suit shall be maintained for any such offense unless brought within six months from September 1st of the year in which the report is due, which date shall be the time when such right of action accrues; and it is hereby made the duty of the secretary of state, as soon as practicable after the first day of September in each year, to report to the prosecuting attorney of the county in which any such delinquent corporation may be located, the fact of its failure to make the required report, and the prosecuting attorney shall, at the first court term after he receives the report from the secretary of state, institute proceedings in the name of the state, at the relation of the county, to recover the fine or fines herein provided for, which shall be applied to the county revenue fund, except that for instituting and prosecuting said suits the prosecuting attorney shall receive as his compensation one-fourth of the penalty collected, and in case any such suit shall be taken to either of the courts of appeals or the supreme court, then the attorney-general is hereby required to assist the prosecuting attorney, and the attorney-general shall also be entitled to one-fourth of the amount recovered from the corporation violating the law. The secretary of state shall, whenever a corporation makes its report after the time provided by law for the making of such report, certify that fact to the prosecuting attorney.

**Sec. 1018. Duty of retiring corporation to report affidavit of dissolution to secretary; penalty for failure.** The president or secretary of every domestic incorporated company in this state, when it shall dissolve, and the principal officer of every foreign corporation when it shall retire from business in this state, is hereby required to file with the secretary of state an affidavit to that effect, and any failure to comply with the provisions of this section shall subject such company or the officers thereof to a penalty of from fifty to five hundred dollars, to be collected as is provided for the collection of penalties and remuneration of prosecuting officers in section 1017 of this article. The mere retirement from business of a domestic corporation, without dissolution, shall not exempt it from the requirement to make reports under this article. The prosecuting attorneys in the various counties, to whom corporations are reported as having failed to comply with this act, when they shall be unable to find the officers of said corporations, or to secure service upon them for its violation, or when they shall ascertain that said corporations were

dissolved before the passage of this act, are hereby required to certify the fact to the secretary of state, separately as to each corporation, and such certificate shall be taken by the secretary of state as prima facie evidence that the corporation is defunct and out of existence for the purposes of the records of his office.

**Sec. 1019. Assessors to report lists of corporations, when.** It shall be the duty of the assessor of each county, and the president of the board of assessors in the city of St. Louis, to make to the secretary of state, when requested by him so to do, a report of all the incorporated companies, foreign or domestic, doing business in the county for which he was elected, and in the city of St. Louis, and he shall receive compensation therefor from the county or city.

**Sec. 1020. Secretary of state to report summary of reports to general assembly.** It shall be the duty of the secretary of state to bind in books the reports received from corporations under this act, and to prepare and print, before each regular meeting of the general assembly, and to submit thereto, 250 copies of a condensed statement of the totals of each item required by this act to be reported.

**Sec. 1021. Circuit attorney in St. Louis, duties of.** The circuit attorney shall for the city of St. Louis perform such duties as are in this act provided to be done by the prosecuting attorneys.

**Sec. 1022. General office must be kept in state; railroads.** Every corporation created by or existing under the laws of this state shall have and keep a general office for the transaction of business, and shall have and keep such office within this state, and shall have at least three of its directors citizens and residents of this state, and in case such a corporation is a railroad or a railway company, it shall have such general office located on or near the line of its road or route mentioned in its charter or articles of association. Every corporation, wherever or however created or existing, which owns, controls, or operates a railroad of one hundred and fifty miles or more in length in this state, and which railroad in this state was constructed under a franchise or charter granted by or derived from this state, shall have its general office for the control, operation, and management of such railroad located in this state, and on or near the line of the said railroad: Provided, that where two or more such railroads are under a common control or management, the maintenance of but one general office therefor within this state, and upon the line of some one of such railroads, shall be required. At such general office shall be kept the offices of the superintendent, general manager, or director, traffic manager, auditor, treasurer, and paymaster, general freight agent, and general ticket and passenger agent, under whatever name the duties usually pertaining to such offices may be transacted, together with all books of account and papers appertaining to the business of such offices; and if the corporation was created by or exists under the laws of this state, there shall also be kept at such general office the office of the secretary of the corporation, and all of the records and books of such corporation.

**Sec. 1023. Penalty.** Any corporation failing or refusing to obey or comply with any of the provisions of the foregoing section for the period of six months, shall be deemed and held to have forfeited any charter or franchise granted by or derived from this state, and shall be enjoined from transacting any business within the limits of this state; and such forfeiture and injunction may be decreed by any circuit court of any county in which such corporation may do business, or into which any line of such railroad or railway may extend, in a suit to be instituted for that purpose, in the name of the state of Missouri, by the prosecuting attorney of the county in which such suit is prosecuted.

**Sec. 1024. Foreign corporations to keep office in this state, when; subject to same conditions as domestic concerns; not permitted to encumber property, when.** Every corporation for pecuniary profit formed in any other state, territory, or country, before it shall be authorized or permitted to transact business in this state, or to continue business therein if already established, shall have and maintain a public office or place in this state for the transaction of its business, where legal service may be obtained upon it, and where proper books shall be kept to enable such corporation to comply with the constitutional and statutory provisions governing such corporation; and such corporation shall be subjected to all the liabilities, restrictions, and duties which are or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers. And no foreign corporation established or maintained in any

way for pecuniary profit of its stockholders or members shall engage in any business other than that expressly authorized in its charter, or the law of this state under which it may come, nor shall it hold any real estate for any period longer than six years, except such as may be necessary and proper for carrying on its legitimate business. And no corporation incorporated under the laws of any other state, territory, or country, doing business in this state, shall be permitted to mortgage, pledge, or otherwise encumber its real or personal property situated in this state, to the injury or exclusion of any citizen or corporation of this state who is a creditor of such foreign corporation, and no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other state, shall take effect as against any citizen or corporation of this state, until all of its liabilities due to any person or corporation in this state at the time of recording such mortgage have been paid and extinguished.

**Sec. 1315. Foreign corporations to procure a license from secretary of state.** No corporation organized or incorporated under the laws of any other state shall do business in this state if such company if organized in this state would organize under article 9 of chapter 12 of the revised statutes, or acts amendatory thereof, without first procuring a license therefor, which license shall be granted by the secretary of state.

**Sec. 1316. Corporation shall file copy of its articles of association with the secretary of state.** In order to procure such license it shall be necessary for the corporation applying therefor to file with the secretary of state a copy of its articles of association and charter granted by the state or territory under which it is organized, and if it shall appear that such company or corporation could not organize under the laws of this state, license shall be refused. Provided that foreign corporations otherwise qualified to engage in business in this state, but whose authorized capital stock exceeds ten million dollars, may obtain such license, if the proportion of the capital stock of such corporation employed in this state shall not exceed the amount of capital which domestic corporations are permitted to have: Provided that this act shall not be construed so as to permit any corporation violating the anti-trust laws of this state to have license to transact business.

---

## Montana.

### Constitution.

---

#### Art. XV. Corporations other than municipal.

**Sec. 11.** No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served. And no company or corporation formed under the laws of any other country, state, or territory, shall have, or be allowed to exercise, or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state.

---

### Civil Code.

**Sec. 4413. Foreign corporations must file copy of charter and statement.** All foreign corporations or joint stock companies except foreign insurance companies and corporations otherwise provided for, organized under the law of any state, or of the United States, or of any foreign government, shall, before doing business within this state, file in the office of the secretary of state and in the office of the county clerk of the county wherein they intend to carry on business, a duly authenticated copy of their charter, or articles of incorporation, and also a statement, certified by the oath of the president and secretary of such corporation, and attested by a majority of its board of directors showing: 1. The name of such corporation and the location of its principal office or place of business without this state; and the location of the place of business or principal office within this state; 2. The amount of capital stock; 3. The amount of its capital stock actually paid in, in money; 4. The amount of its capital stock paid in, in any other way, and in what; 5. The amount of the assets

of the corporation and of what the assets consist, with the actual cash value thereof; 6. The liabilities of such corporation, and if any of its indebtedness is secured, how secured, and upon what property. Such corporation or joint stock company, shall also file, at the same time, and in the same office, a certificate, under the seal of the corporation, and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the said corporation has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that service of process may be made upon some person, a citizen of this state, whose name and place of residence shall be designated in such certificate and such service, when so made upon such agent shall be valid service on the corporation or company, and such agent shall reside at the principal place of business of such corporation or company; 7. In case of alteration or amendment of the charter or articles of incorporation of any foreign corporation doing business in this state, or of increasing its capital stock, or of continuing its corporate existence, it must within thirty days after the same is adopted by the corporation, file a duly authenticated copy of such amendment or alteration or certificate of increase of capital stock, or of continuance of corporate existence in the office of the secretary of state and in the office of the county clerk of the county where it intends to carry on business; and whenever any such corporation increases its capital stock or continues its corporate existence, it shall pay to the secretary of state at the time of filing in his office the duly authenticated copy of the certificate thereof, the same fee that is required by law from domestic corporations for filing certificates of increase of capital stock or certificates of continuance of corporate existence. Any such corporation failing, neglecting, or refusing to file such duly authenticated copies of all alterations or amendments, of charter or articles of incorporation, and of all certificates of increase of capital stock or continuance of corporate existence, shall forfeit its right to do business in this state and shall be subject to all the penalties, liabilities and restrictions imposed by law upon foreign corporations for doing business in this state without filing authenticated copies of their charters, or articles of incorporation, in the manner required by law; provided, however, that any foreign corporation now doing business in this state and which has altered or amended its charter or articles of incorporation or increased its capital stock, or continued its corporate existence since first filing a duly authenticated copy of its charter or articles of incorporation with the secretary of state, and which has not already filed a duly authenticated copy of such alterations, amendments, or certificates of increase or continuance, must within ninety day from and after the passage and approval of this act comply herewith.

**Sec. 4414. Consent of agent.** The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of a consent, executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof and conclusive evidence of the authority of the officers executing it.

**Sec. 4415. Contracts void if made before compliance with act.** If any foreign corporation shall attempt or commence to do business in this state without having first filed said statement certificate and consent, required by this act, no contracts made by such corporation, or any agent or agents thereof, during the time it shall so neglect to file such statement, certificate or consent, shall be enforceable by the corporation until the foregoing provisions have been complied with.

**Sec. 4416. Annual statement.** Every such corporation shall annually, and within two months from the first day of April of each year, make a report, which shall be in the same form, and contain the same information as required in the statement mentioned in section 4413 of this act, which report shall be filed in the office of the county clerk of the county wherein the business of said corporation is carried on, and a duplicate thereof in the office of the secretary of state.

**Sec. 4417. Penalty.** Every foreign corporation doing business in this state contrary to the provisions of this act is guilty of a misdemeanor.

**Sec. 4418. Penalty for acting as agent.** Every person who acts as agent or in any other capacity for a foreign corporation, who has not complied with the provisions of law relating to foreign corporations, is guilty of a misdemeanor.

**Sec. 4419. Corporations engaged in business at time of passage of act.** Any foreign corporation or joint stock company now engaged in carrying on business in Montana, which has heretofore filed a copy of its charter or articles of incorpora-

tion, a statement, certificate designating an agent upon whom service of summons and other process may be made, and the consent of such agent in compliance with the provisions of title XI, part IV, division 1 of the civil code of Montana shall not be required to comply with the provisions of section 4413 and 4414 of this act, provided, that if the agent designated and appointed by such corporation or joint stock company does not now reside in this state, or has resigned or his appointment has been revoked, or if he shall hereafter reside out of the state, or resign, or his appointment be revoked, such corporation or joint stock company shall be required to designate another agent and file such designation and the consent of such agent in accordance with the provisions of this act.

---

**Laws, 1909, c. 109. An Act to make Foreign Corporations and Joint Stock Companies, Corporations and Joint Stock Companies of this State for the purposes of Jurisdiction and to make the Stocks and Shares of such Corporations and Joint Stock Companies subject to Attachment the same as the Stocks and Shares of Domestic Corporations are now subject to Attachment under the Laws of this State.**

---

**Sec. 1. Foreign corporations deemed domestic for purposes of jurisdiction.** All foreign corporations or joint stock companies, except foreign insurance companies and corporations otherwise provided for, organized under the laws of any other state or territory of the United States, or, of the United States, or of any foreign government, and doing business in this state, or, which may hereafter engage in business in the state, shall be deemed and taken to be corporations of this state for the purposes of jurisdiction, and shall be subject to the jurisdiction of the courts of this state, and may sue and be sued therein in the mode and manner that is, or, may be by law directed in the case of corporations created or organized under the laws of this state.

**Sec. 2. Shares in foreign corporations subject to attachment.** The stocks or shares of such foreign corporations and joint stock companies, doing business in this state shall be subject to attachment in the same manner as now provided by law in the case of domestic corporations.

---

### Code of Civil Procedure.

---

**Sec. 6519. Summons, how served.** The summons must be served by delivering a copy thereof, as follows: . . . . 1. If the suit is against a corporation formed under the laws of this state, to the president or other head of the corporation, secretary, cashier, or managing agent thereof. 2. If the suit is against a foreign corporation, or a non-resident joint stock company or association doing business and having a managing or business agent, cashier or secretary, within this state, to such agent, cashier or secretary, or to a person designated as provided in section 4414 of the civil code. 3. Any corporation doing business in this state may be served with summons, by delivering a copy of the same to the president, secretary, treasurer, or other officer of the corporation, or to the agent designated by such corporation as the person upon whom service shall be made as required by law, and if none of the persons above mentioned can be found in the county, then service may be made upon any clerk, superintendent, general agent, cashier, principal director, ticket agent, station keeper, managing agent or other agent, having the management, direction, or control of any property of such corporation. If none of the persons in this section described can be found in the county in which such action is commenced then service may be made, as provided in this section, upon any of the persons herein described, in any county of this state.

---

### Nebraska.

#### Ann. St. 1909.

---

**Sec. 4137. Foreign corporations may incorporate in this state.** That any corporation under the laws of any other state or states, territory or territories, which has

filed, or may hereafter file with the secretary of state of this state a true copy of its charter or articles of association, shall, on filing with the secretary of state a certified copy of a resolution adopted by its board of directors, accepting the provisions of this act, be and become a body corporate of this state.

**Sec. 4252. Foreign company, appoint resident agent. Certificate.** That every foreign corporation, as hereinafter defined, except insurance, beneficiary, and railroad companies, which now maintain a resident agent or agents in this state, and also except such corporations engaged in interstate commerce, as common carriers, shall appoint an agent or agents in this state, within thirty days after the taking effect of this act, and before it shall be authorized to engage in any kind of business therein; shall make and file a certificate, signed by the president or secretary of such corporation, duly acknowledged, in the office of the secretary of state, and also, in the office of the register of deeds of the county, in which its principal place of business in this state shall be located, designating such its principal place of business, therein and appointing an agent, or agents in this state, who shall be designated by his official title, and one of whom shall reside at such principal place of business, upon whom service of process, or other legal notice of the commencement of any legal proceeding, or in the prosecution thereof, shall be served; and service of process or of any such other legal notice, as aforesaid upon the auditor of public accounts, or upon any such agent, or agents, shall be taken and shall be held to be valid service upon such corporation in all courts of this state, in counties where the cause of action, or some part thereof, arose, or in counties where the contract, or portion thereof entered into by such corporation has been violated or is to be performed.

**Sec. 4253. Process served on auditor, forwarded to agent.** The auditor of public accounts, upon receipt by him of any process or notice served pursuant to the requirements of section one of this act, shall forthwith forward the same by mail to such address as may have been designated by such corporation in writing, either in said original certificate, or in any subsequently written direction by such corporation, in the office of the secretary of state as hereinbefore directed.

**Sec. 4254. List of agents kept by secretary of state.** The secretary of state shall keep a book in which shall be recorded all such certificates and addresses so required to be filed with him, and shall charge, collect, and receive from any such corporation for his services in respect of this requirement, the sum of fifty dollars.

**Sec. 4255. Docket of process served kept by auditor.** The auditor of public accounts shall keep a book in which shall be noted the parties to each suit or legal proceeding in which process or notice has been served as aforesaid, together with the court in which such suit or legal proceeding is pending, the date of the receipt by him of the time of forwarding of the same, and the address to which it has been forwarded.

**Sec. 4256. Failure to appoint agent. Penalty.** Such foreign corporations now or heretofore so engaging in business in this state, shall within thirty days from and after the taking effect of this act, appoint such agent or agents and file such certificate, the failure theretofore to have so done, shall not, however, invalidate any contract of or with such corporation heretofore made whether made in connection with a lien on real estate or otherwise; and within like time from the commencement of doing business in this state, appoint such agent or agents and file such certificate. And in case such corporations shall neglect, or refuse, or fail, so to do, each of them shall forfeit and pay to the state of Nebraska, the sum of one thousand dollars to be recovered in an action brought by said state, by the attorney-general thereof, or by any county attorney of the same; and that any representative of such corporation in this state shall be deemed guilty of a misdemeanor, should he engage in any business for such corporation before such agent or agents shall have been appointed and such certificate filed, punishable by a fine not exceeding twenty-five dollars.

**Sec. 4257. Provisions of act cumulative.** That this act shall be held cumulative and not a restriction or limitation upon, any other legal method of obtaining service of process or other notice upon any of the corporations designated in this act.

**Sec. 4258. Foreign corporation, defined.** Foreign corporations as the terms are used in this act shall embrace and include all corporations organized under the laws of any foreign government, of any other state than the state of Nebraska, and of any territory thereof, including the district of Columbia.

**Sec. 4259. Corporation must have state license.** No corporation heretofore or hereafter incorporated under the laws of this state, or of any other state, shall do or



attempt to do business by virtue of its charter, or certificate of incorporation, in this state, without a state occupation permit therefor.

**Sec. 4261. Failure to obtain permit, forfeit right to do business.** The secretary of state shall, on or before the fifteenth day of September in each year, report to the governor of the state a list of all corporations which have become delinquent, as provided in section two of this act, and the governor shall forthwith issue his proclamation, declaring under this act that the charters of such delinquent domestic corporations will be forfeited and the right of such foreign corporations to do business in this state will be forfeited unless payment of said occupation fee, together with the penalty for such delinquency, as hereinbefore provided, be made to the secretary of state on or before the hour of four o'clock p.m. of the thirtieth day of November next following.

**Sec. 4262. Proclamation of governor, filed with secretary.** Said proclamation shall be filed immediately in the office of the secretary of state, and said secretary of state shall immediately cause a copy of said proclamation to be published in one issue of two daily newspapers to be selected by the governor.

**Sec. 4263 Delinquent companies barred November 30th, 4 p. m.** At the hour of four o'clock p. m. of the thirtieth day of November each year the charters of all delinquent domestic corporations which have failed to pay the said occupation fee, together with said penalty for such delinquency, shall be forfeited to the state of Nebraska, and the right of all delinquent foreign corporations to do business in this state, which have failed to pay said occupation fee, together with the penalty for such delinquency, shall be likewise forfeited.

**Sec. 4264. Corporations not included in this act.** All educational, religious, scientific, and charitable corporations and all banking, insurance, and building and loan association corporations, and all corporations which are not organized for pecuniary profit, are exempt from the provisions of this act.

**Sec. 4265. Secretary list corporations barred, send county clerk.** On or before the thirty-first day of December of each year the secretary of state shall make a list of all domestic corporations whose right to do business in this state has been so forfeited, and shall transmit a certified copy thereof to each county clerk in this state, who shall file the same in his office.

**Sec. 4266. Delinquent company transacting business. Penalty.** It shall be unlawful for any corporation, delinquent under this act, either domestic or foreign, which has not paid the occupation fee, together with the penalty for such delinquency, as in this act prescribed, to exercise the powers of such corporation, or to transact any business in this state, after the thirtieth day of November next following the delinquency. Each and every person who exercises any of the powers of a corporation so delinquent, either domestic or foreign, which has not paid the occupation fee, together with the penalty for such delinquency, or who transacts any business for, or in behalf of any such corporation, after the thirtieth day of November next following the delinquency, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, and not exceeding one thousand dollars, or by imprisonment in the county jail not less than fifty days nor more than five hundred days, or by both such fine and imprisonment.

**Sec. 4267. Settlement of affairs of delinquent corporation.** In all cases of forfeiture under the provisions of this act, the directors or managers in office of the affairs of any domestic corporation, whose charter may be so forfeited, or of any foreign corporation whose right to do business in this state may be so forfeited, are deemed to be trustees of the corporation and stockholders or members of the corporation whose power or right to do business is forfeited, and have full power to settle the affairs of the corporation and to maintain or defend any action or proceeding then pending in behalf of or against any of said corporations, or to take such legal proceedings as may be necessary to fully settle the affairs of said corporation, and such directors or managers, as such trustees, may be sued in any of the courts of this state by any person having a claim against any of said corporations.

## Nevada.

### Comp. Laws, 1900.

**Sec. 897. Foreign corporation to file certificate.** Every incorporated company or association created and existing under the laws of any other state, or of any foreign government, shall file in the office of the county recorder of each county in this state, wherein such corporation is engaged in carrying on business of any character, a properly authenticated copy of their certificate of incorporation, or of the act or law by which such corporation was created, with a proper certificate of the officers of the corporation as to the genuineness of the same; and to each of such certificates shall be appended a duly certified list of the officers of such corporation, which said list, with the proper supplemental certificate, shall be corrected as often as a change in such officers occurs; and a copy of such certificate, duly certified to by the county recorder wherein such certificate is filed, may be introduced in evidence to prove the fact of the existence of such corporation, without further proof.

**Sec. 898. Penalty.** Any person or persons who shall act as the managing agent or superintendent of any such corporation, in conducting or carrying on any business of such corporation, in any of the counties of this state, without any such certificate having been filed as required by section one of this act, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than fifty nor more than five hundred dollars, to which may be added imprisonment in the county jail for any period not exceeding six months; provided, that in all actions against such corporations, associations, or companies, which have neglected to file the proper certificate or act of their incorporation, as heretofore provided, it shall be sufficient to establish the legal existence of such corporation by the proof of their acting as such.

**Sec. 899. Agent to reside in state.** Every incorporated company or association created and existing under the laws of any other state or territory, or foreign government, or the government of the United States, owning property or doing business in this state, shall appoint and keep in this state an agent upon whom all legal process may be served for such corporation or association. Such corporation shall file a certificate, properly authenticated by the proper officers of such company, with the secretary of state, specifying the full name and residence of such agent, which certificate shall be renewed by such company as often as a change may be made in such appointment, or vacancy shall occur in such agency.

**Sec. 900. Service of process.** Any and all legal process may be served upon such company by delivering to such agent, personally, a copy of such process, which shall be legal and valid.

**Sec. 901. When no agent, how served.** If any such company shall fail to appoint such agent, or fail to file such certificate for fifteen days after a vacancy occurs in such agency, on the production of a certificate of the secretary of state, showing either fact, which certificate shall be conclusive evidence of the fact so certified to and be made a part of the return of service, it shall be lawful to serve such company with any all legal process, by delivering a copy to the secretary of state, or, in his absence, to any duly appointed and acting deputy secretary of state, and such service shall be valid to all intents and purposes; provided, that in all cases of service under this act, the defendant shall have forty days (exclusive of the day of service) within which to answer or plead, except in cases in the justice courts, where the summons shall specify the day and hour for the appearance of the defendant, and shall be made returnable not less than forty nor more than sixty days from the date of issuance thereof, and shall be served at least forty days before the time fixed therein for the appearance of the defendant. This act shall be construed as giving an additional mode and manner of serving process and as not affecting the validity of any service of process hereafter made, which would be valid under any statute now in force.

**Sec. 2725. Persons to take, hold, and own property.** Any non-resident alien, person, or corporation, except subjects of the Chinese empire, may take, hold, and enjoy any real property, or any interest in lands, tenements, or hereditaments

within the state of Nevada, as fully, freely, and upon the same terms and conditions as any resident citizen, person, or domestic corporation.

*Quaere* as to constitutionality of the exception of Chinese subjects.

[Sec. 2726. Relates to the exercise of the right of eminent domain, as to which see also Acts, 1907, c. 128, sec. 34.]

---

**Acts, 1901, c. 108. An Act requiring Foreign Corporations doing Business in the State of Nevada to publish Annual Statements.**

**Sec. 1. Foreign corporations to publish annual statements.** All foreign corporations doing business in the state of Nevada shall during the month of May of this year and each succeeding year in the month of January, publish a statement of their last year's business in some daily newspaper in the state of Nevada for a period of one week.

**Sec. 2. To file copy with assessor.** The secretary of the company publishing the statement shall file a copy with the assessor of each county of the state of Nevada, in which said company is doing business.

**Sec. 3. Penalty.** Any corporation coming within the provisions of this Act who shall neglect or refuse to file a statement as required by section one of this act, shall be liable to a penalty of \$ 100 for each month that the published statement remains unfiled with the several assessors of the state.

**Sec. 4. District attorney may commence suit.** Any district attorney in the state is competent to sue to recover the penalty, or the attorney-general. The first county suing through its district attorney shall secure the penalty, and if no suit is brought for the penalty by any district attorney the state shall have the right to recover through its attorney-general.

---

**Acts, 1905, c. 51. An Act to amend an Act entitled "An Act providing a General Corporation Law," approved March 16, 1903.**

**Sec. 1.** [Section 85 of the law of 1903 relative to corporations is amended to read as follows]:

Section 85. Every corporation incorporated or authorized to transact business in this state shall, within thirty days after every and any corporate act which makes any change in the board of directors or trustees, file in the office of the secretary of state a statement duly authenticated by the signatures of the president and secretary and verified by each of them, giving the names of all the directors or trustees and officers, with the date of election or appointment of each, term of office, residence and postoffice address of each, character of his business, location (giving also street and number if practicable) of its principal office in this state, and the name of the resident agent in this state in charge of said office upon whom process can be served, and every corporation failing so to do for thirty days shall forfeit to the state \$ 100.

---

**Acts, 1907, c. 89. An Act to require Foreign Corporations to qualify before carrying on Business in this State, regulating and prescribing the Manner thereof, other Matters pertaining thereto, and repealing all other Acts in conflict herewith.**

**Sec. 1. All foreign corporations to file copy of charter.** Every corporation organized under the laws of another state, territory, the District of Columbia, a dependency of the United States or foreign country, which shall hereafter enter this state for the purpose of doing business therein, must, before commencing or doing any business in this state, file in the office of the secretary of state of the state of Nevada a certified copy of said articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental acts, or other instrument of authority by which it was created, and a certified copy thereof, duly certified by the secretary of state of this state, in the office of the county clerk of the county where its principal place of business in this state is located.

**Sec. 2. Fees.** On filing certified articles, papers, or other instrument of incorporation, as required in section one of this act, said corporation shall pay the same fees to the secretary of state as are paid by corporations organized under the laws of this state.

**Sec. 3. Penalties.** Every such corporation which shall fail or neglect to comply with the provisions of this act shall be subject to a fine of not less than five hundred dollars, to be recovered in a court of competent jurisdiction, and shall not be allowed to commence, maintain, or defend any action or proceeding in any court of this state until it shall have fully complied with the provisions of this act; and any person or persons who shall act as agent within this state of any such corporation, which shall fail for a period of ten days after the taking effect of this act to comply with the provisions herein, shall also be personally and individually liable to a fine of not less than five hundred dollars; and it is hereby made the duty of the secretary of state, as he may be advised that corporations are doing business in contravention of this act, to report them to the governor, who shall instruct the district attorney of the county wherein such corporation has its principal place of business, or the attorney-general of the state, or both, as soon as practicable, to institute proceedings to recover the fine or fines provided for in this section.

## **Acts, 1907, c. 165. An Act to give Foreign Corporations the Benefits of the Statute of Limitations of this State on certain Conditions.**

**Sec. 1. Statute of limitations to apply.** Every foreign corporation doing business in the state of Nevada, which complies with all the provisions of the laws of this state, with reference to or concerning such corporations, is and shall be thereafter entitled to the benefit of the laws of this state, limiting the time for the commencement of civil actions, but no such corporation is or shall be entitled to the benefit thereof, nor can any such corporation maintain or defend any action or proceeding in any court of this state, until such corporation has complied with all the said laws of this state.

## **New Hampshire.**

There are no special provisions regarding the recognition or qualification to do business of foreign trading and manufacturing corporations, except as set forth in the statutes below.

## **Pub. St. 1901, c. 148. General Powers of Corporations.**

**Sec. 20. Corporation officers to send printed reports to state librarian.** The directors and others officers of all corporations doing business in the state shall transmit to the librarian of the state library copies of all printed reports made by them in relation to the affairs of the corporations, immediately after the same are published.

Foreign corporations doing business in this state shall file with the state librarian, on or before the first day of January in each year, all printed reports of their condition issued by them during the twelve months preceding. — Laws, 1895, c. 3, sec. 6.

**Sec. 21. Foreign manufacturing corporations may hold property in state.** Manufacturing corporations not established by the laws of this state doing business in the state are authorized and empowered to acquire, hold, and convey real and personal property, and shall conform to the laws of the state as to returns and taxation, the same as domestic corporations.

**Sec. 22. Authority of supreme court in winding-up.** The supreme court shall have general powers in equity, upon petition of stockholders holding one-fourth of the stock of any corporation, or, if there are no stockholders, of one-fourth of the members thereof, to decree the dissolution of the corporation, or such other relief as may be just, and may make such final and interlocutory orders, judgments, and decrees for the winding-up of their affairs, the payment of their debts, and the distribution of their assets, as justice may require.

## New Mexico.

### Laws, 1905, c. 79. An Act to regulate the Formation and Government of Corporations for Mining, Manufacturing, Industrial, and other Pursuits.

**Sec. 94. Process against foreign corporations.** In all personal suits or actions hereafter brought in any court of this territory, against any foreign corporation, process may be served upon any officer, director, or agent of such corporation, either personally or by leaving a copy thereof at his dwelling house or usual place of abode or by leaving a copy at the office, depot, or usual place of business of such foreign corporation.

**Sec. 99. Foreign corporation may hold and convey lands, etc.** Any foreign corporation created by any other territory or state or by any foreign state, kingdom, or government may acquire by devise, or otherwise and hold, mortgage, lease, and convey real estate, in this territory for the purpose of prosecuting its business or objects, or such real estate as it may acquire by way of mortgage or otherwise, in the payment of debts due such corporation: Provided, such foreign state, kingdom, or government, under whose laws such corporation was created, shall not be at the time of such purchase at war with the United States.

**Sec. 100. Foreign corporation may acquire, own and dispose of real estate in New Mexico.** It shall be lawful for any foreign corporation whatsoever to purchase and convey, to lease, hold, occupy, and use for the purposes of such corporation such real estate in this territory as may be divided or conveyed to it; subject to such limitation as may be prescribed by the acts of congress while it remains a territory and by the constitution after it becomes a state.

**Sec. 101. Foreign corporations subject to this act.** Foreign corporations doing business in this territory shall be subject to the provisions of this act, so far as the same can be applied to foreign corporations. Foreign corporations including railroad and telegraph corporations having complied with the law shall have the same powers and be subject to all liabilities and duties as corporations of a like character organized under the laws of this territory; but they shall have no other or greater powers. And no foreign or domestic corporation established or maintained in any way for pecuniary profit of its stockholders or members shall purchase or hold real estate in this territory except as provided in this act and the laws of the territory now existing, and no corporation doing business in this territory, incorporated under the laws of any other state or territory shall be permitted to mortgage, pledge, or otherwise incur its real or personal property, situated in this territory, to the injury or exclusion of any citizen, citizens, or corporations of this territory, who are creditors of such foreign corporation, and no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other state, shall take effect as against any citizen or corporation of this territory until all its liabilities due to any person or corporation in this territory at the time of recording such mortgage have been paid and extinguished.

**Sec. 102. Foreign corporations to file copy of charter, statement, etc., before commencing business.** Every foreign corporation, except banking, insurance, and railroad corporations, before transacting any business in this territory, shall file in the office of the secretary of the territory a copy of its charter, or certificate of incorporation, certified by the proper authority of the territory, state or county of its creation, and a statement of the amount of its capital stock authorized and in the amount of its capital stock authorized and in the amount actually issued, the character of the business which it is to transact in this territory, and designating its principal office in this territory and an agent who shall be a domestic corporation or a natural person of full age actually resident in this territory, together with his place of abode, upon which agent process against said corporation may be served and the agency so constituted shall continue until the substitution, by writing, of another agent; upon the filing of such copy and statement, the secretary of the territory shall issue to such corporation a certificate that it is authorized to transact business in this territory and that the business is such as may be lawfully transacted by corporations of this territory, and he shall keep a record of all such certificates issued.

**Sec. 103. Can not maintain action until certificate of secretary of the territory is obtained.** Until such corporation so transacting business in this territory shall

have obtained said certificate from the secretary of the territory, it shall not maintain any action in this territory, upon any contract made by it in this territory: Provided, that nothing herein shall prevent the enforcement of any contract made prior to the passage of this act, which it could have enforced prior thereto.

**Sec. 104. On death of agent, another to be appointed; penalty for failure.** If said agent shall die, remove from the territory, or become disqualified, such corporation shall forthwith file in the office of the secretary of the territory a written appointment of another agent, attested in the manner above provided, and in case of the omission to do so within thirty days after such death, removal or disqualification, then the secretary of the territory, upon being satisfied that such omission has continued for thirty days, shall by entry on the record thereof, revoke the certificate of authority to transact business within this territory, and process against such corporation in actions upon any liability incurred within this territory before, the designation of another agent, may, after such revocation, be served upon the secretary of the territory; at the time of such service the plaintiff shall pay to the secretary of the territory two dollars, to be included in the taxable costs of such plaintiff, and the secretary of the territory shall forthwith mail a copy of such process to such corporation at its general office or to the address of some officer thereof, if known to him.

**Sec. 105. Unlawful to transact business until authority is obtained.** Every foreign corporation transacting any business in any manner whatsoever, directly or indirectly, in this territory, without having first obtained authority therefor, as hereinabove provided, shall for each offense forfeit to the territory the sum of two hundred dollars, to be recovered with costs in an action prosecuted by the solicitor general in the name of the territory.

**Sec. 106. Attachment against foreign corporation.** Attachments may issue against corporations not created or recognized as corporations and joint stock associations of this territory by the laws of this territory and not having qualified themselves to do business in this territory.

**Sec. 107. Service of prerogative writ against foreign corporations.** In any proceeding in any court of this territory against a foreign corporation requiring the use of any prerogative writ, such writ may be served upon the president, vice-president, secretary, or other head officer, or any director, either personally or by leaving a copy at the dwelling house or usual place of abode of such officer or director, or upon any general agent, attorney, solicitor, superintendent, or manager of such corporation.

**Sec. 108. How writs may be enforced upon failure to make return.** In case any such corporation, after the service of any writ, as aforesaid, shall neglect or refuse to make a proper return thereto, or shall neglect or refuse to obey the command of any such writ, when issued upon any judgment, order, or decree of the supreme court or any of the district courts of this territory, and served as aforesaid, within the time prescribed by such writ, said court may enforce such writs by attachments or sequestration of the property, rights, and credits of the corporation within this territory.

## North Carolina.

### Rev. 1905.

**Sec. 440. Served by copy; corporations; infants; persons non compos.** The summons shall be served by delivering a copy thereof in the following cases: 1. If the action be against a corporation, to the president or other head of the corporation, secretary, cashier, treasurer, director, managing or local agent thereof: Provided that any person receiving or collecting moneys within this state for, or on behalf of, any corporation of this or any other state or government, shall be deemed a local agent for the purpose of this section; but such service can be made in respect to a foreign corporation only when it has property within this state, or the cause of action arose therein, or when the plaintiff resides in the state, or when such service can be made within the state, personally upon the president, treasurer, or secretary thereof,

**Sec. 1152. Annual statement; forfeiture for failure to make; duty of secretary of state and attorney-general.** Every corporation authorized to transact business in this state, shall file in the office of the secretary of state, annually, on or before December first, a statement authenticated by the signatures of the president and

secretary containing the total amount of capital stock authorized, the amount actually issued, whether for cash or for purchase of property, designating what property, the names of all of the directors, and officers, with the date of the election or appointment, term of office, residence and postoffice address of each the character of its business and location, giving the street and number, if any, of its principal office in the state, and the name of the agent in charge of said office, upon whom process against the corporation may be served; but this shall not prevent service of process on other agents authorized by law; and for this purpose the secretary of state shall furnish blanks in proper form and safely keep in his office all such statements, and issue to the corporations filing the same his certificate thereof, and also prepare an alphabetical index thereof, which statements and index shall be submitted to the inspection of persons interested, at all proper hours; and every corporation failing to comply with the provisions of this section shall forfeit to the state twenty-five dollars, to be collected by the sheriff of the county where the principal office of said corporation is situated, in a civil action to be brought before a justice of the peace, and when collected shall be remitted by the sheriff to the secretary of state, after deducting his cost as allowed by law, which he shall collect in addition to the penalty. This section shall not apply to any corporation which is required to file a similar statement in the office of the commissioner of insurance, or the corporation commission.

**Sec. 1193. May do business here.** Any corporation created by any other state, or by any foreign state, kingdom, or government may acquire by devise or otherwise and hold, mortgage, lease, and convey real estate in this state for the purpose of prosecuting its business, or objects, or such real estate as it may acquire by way of mortgage or otherwise in the payment of debts due such corporation: Provided, such foreign state, kingdom, or government, under whose laws such corporations were created, shall not be at the time of such purchase at war with the United States.

**Sec. 1194. To file charters and statement with secretary of state; fees therefor; forfeiture.** Every foreign corporation before being permitted to do business in this state, railroad, banking, insurance, express and telegraph companies excepted, shall file in the office of the secretary of state a copy of its charter or articles of agreement, attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized, the amount actually issued, the principal office in this state, the name of the agent in charge of such office, the character of the business which it transacts and the names and post-office addresses of its officers and directors. And such corporation shall pay to the secretary of state, for the use of the state, ten cents for every one thousand dollars of the total amount of the capital stock authorized to be issued by such corporation, but in no case less than ten dollars not more than one hundred dollars. And every corporation failing to comply with the provisions of this section shall forfeit to the state five hundred dollars, to be recovered, with costs, in an action to be prosecuted by the attorney-general, who shall prosecute such actions whenever it shall appear that this section has been violated.

**Sec. 1243. Resident process agent required; in absence, service upon secretary of state sufficient; fees.** Every corporation having property or doing business in this state, whether incorporated under its laws or not, shall have an officer or agent in this state, upon whom process in all actions or proceedings against it can be served; and any corporation failing to comply with the provisions of this section shall be liable to a forfeiture of its charter, or to the revocation of its license to do business in this state. In any such case, process in any action or proceeding against such corporation, may be served upon the secretary of state by leaving a true copy thereof with him, and he shall mail the said copy to the president, secretary, or other officer of the corporation, upon whom, if residing in this state, service could be made; and for the service to be performed by the said secretary, he shall receive a fee of fifty cents, to be paid by the party at whose instance the service is made.

**Sec. 1448. Process served on foreign corporation.** Whenever any action of which a justice of the peace has jurisdiction shall be brought against a foreign corporation, which corporation is required to maintain a process agent in the state, the summons may be issued to the sheriff of the county in which such process agent resides, and when certified under the seal of his office by the clerk of the superior court of the county in which the justice issuing such summons resides to be under the hand of such justice, the sheriff of the county to which such summons shall be issued shall serve the same as in other cases and make due return thereof. No justice of the

peace shall enter a judgment in such cases against any such foreign corporation unless it shall appear that the process was duly served upon such process agent at least twenty days before the return day of the same. The summons may be made returnable at a time to be therein named, not exceeding forty days from the date of such summons.

---

## North Dakota.

### Constitution.

---

#### Article VII.

**Sec. 136.** No foreign corporation shall do business in this state without having one or more places of business, and an authorized agent or agents in the same upon whom process may be served.

---

#### Rev. Codes, 1905.

---

**Sec. 4695.** Conditions of foreign corporations doing business in this state. No foreign corporation, association, or joint stock company, except an insurance company, shall transact any business within this state, or acquire, hold or dispose of property, real or personal, within this state, until such corporation shall have filed in the office of the secretary of state a duly authenticated copy of its charter or articles of incorporation, and shall have complied with the provisions of this chapter.

**Sec. 4696.** Record. Such charter or articles of incorporation shall be recorded in a book to be kept by the secretary of state for that purpose.

**Sec. 4697.** Appoint secretary of state attorney for service. Such corporation, association, or joint stock company, shall by a duly executed instrument filed in the office of the secretary of state constitute and appoint the secretary of state and his successors, its true and lawful attorney upon whom all process in any action or proceeding which may be served upon it personally in this state and that such appointment shall continue in force irrevocable so long as any liability of the corporation, association, or joint stock company remains outstanding in the state. Service upon such attorney shall be deemed sufficient service upon the corporation, association, or joint stock company. Whenever process against any foreign corporation, association, or joint stock company, doing business in this state, shall be served upon the secretary of state he shall forthwith mail a copy of such process, postage prepaid, and directed to such corporation, association, or joint stock company at its principal place of business or if it is a corporation, association or joint stock company of a foreign country, to its resident manager, in the United States, or to such other person as may have been previously designated by it by written notice filed in the office of the secretary of state. As a condition of valid and effectual service, the plaintiff shall pay to the secretary of state at the time of the service, the sum of two dollars which the plaintiff shall recover as taxable costs if he prevails in his action. The secretary of state shall keep a record of all such process which shall show the time and the hour of service.

**Sec. 4698.** Liability of officers, etc., for failure to comply. Any failure to comply with the provisions of the last three sections and with section 4624 of this code shall render each and every officer, agent or stockholder of any corporation, association, or joint stock company, failing to comply therewith, jointly and severally liable on any and all contracts of such corporation, association, or joint stock company made within this state during the time such corporation, association, or joint stock company is so in default.

**Sec. 4699.** Failure to comply renders all contracts void. Every contract made by or on behalf of any corporation, association, or joint stock company, doing business in this state, without first having complied with the provisions of section 4624, if an insurance company, or with the provisions of section 4695 and 4697, if other than an insurance company, shall be wholly void on behalf of such corporation, association, or joint stock company and its assigns, but any contract so made in violation of the provisions of this section may be enforced against such corporation, association, or joint stock company.

---



## Oklahoma.

### Comp. Laws, 1909.

---

**Sec. 1538. Foreign corporations must file charter.** No corporation created or organized under the laws of any other state or territory shall transact any business within this state, or acquire, hold, and dispose of property, real, personal, or mixed, within this state, until such, corporation shall have filed in the office of the secretary of state a duly authenticated copy of its charter or articles of incorporation, and shall have complied with the provisions of this article: Provided that the provisions of this act shall not apply to corporations or associations created for religious or charitable purposes solely.

**Sec. 1539. Record.** Such charter or articles of incorporation shall be recorded in a book to be kept by the secretary of state for that purpose.

**Sec. 1540. Not to transact business; exception; conditions.** No corporation except created solely for religious or charitable purposes shall transact business within this state, until it shall have filed in the office of the secretary of state, a certified copy of its charter or articles of incorporation, which shall be recorded in a book to be kept by the secretary of state, for that purpose, and shall have paid the fees required by law. Every foreign corporation before it shall be authorized or permitted to transact business in this state or continue business therein if already established, shall, by its certificate under the hand of the president and seal of the company, appoint an agent who shall be a citizen of the state and reside at the state capital, upon whom service or process may be made in any action in which said corporation by a party; and that said action may be brought in any county in which the cause of action arose as now provided by law, was transacted and service upon said agent shall be taken and held as due service upon said corporation, such certificate shall also state the principal place of business of such corporation in this state, with the address of the resident agent. A duly authenticated copy of the appointment and commission of such agent shall be filed and recorded in the office of the secretary of state, for which a fee therefor of one dollar for each shall be paid to the secretary and a like fee of one dollar for each subsequent appointment of any agent so filed.

A certified copy of the appointment of said agent under the hand and seal of the secretary of state, shall be sufficient evidence of the appointment of said agent in any court. The secretary of state shall prepare a list for distribution giving the names of all corporations with the name of their agent showing the address of the agent by street and number, and shall include the same in his biennial report to the governor.

**Sec. 1541. Result of failure to comply.** If any such foreign corporation shall fail to comply with the provisions of this act, all its contracts with citizens of this state, entered into after the approval of this act shall be void as to the corporation and no court of this state shall enforce the same in favor of the corporation.

**Sec. 1542. Suit; service, when failure to appoint resident agent.** In all cases where a cause of action shall accrue to a resident or citizen of the state of Oklahoma, by reason of any contract with a foreign corporation, or where any liability on the part of a foreign corporation shall accrue, in favor of any citizen or resident of this state, whether in tort or otherwise, and such foreign corporation has not designated an agent in this state upon whom process may be served or has not an officer continuously residing in this state, upon whom summons or other process may be served so as to authorize a personal judgment, service of summons, or other process may be had upon the secretary of state and such service shall be sufficient to give jurisdiction of the person to any court in this state having jurisdiction of the subject-matter whether sitting in the county where the secretary of state is served or elsewhere in the state.

This act shall not be effective in cases where its enforcement would conflict with the powers of congress or the federal laws to regulate commerce between the states.

**Sec. 1543. Suit by corporations failing to comply.** No foreign corporation, as above defined, which shall fail to comply with this act, can maintain any suit or action, either legal or equitable, in any of the courts of this state, upon any demand, whether arising out of contract or tort.

## Oregon.

### Laws, 1903. p. 39. An Act to provide for the Licensing of Domestic Corporations, and Foreign Corporations, Joint Stock Companies and Associations, etc.

**Sec. 6. Foreign corporations must file power of attorney.** Every foreign corporation, and every foreign joint stock company, or association, before transacting business within this state, shall file the declaration and pay the entrance fee herein-after provided, and shall duly execute and acknowledge a power of attorney, and cause the same to be recorded in the office of the secretary of state, which power of attorney shall be irrevocable, except by the substitution of another qualified person for the one mentioned therein as attorney in fact, and such power of attorney shall appoint some person, who is a citizen of the United States and a citizen and resident of this state, as attorney in fact for such foreign corporation, joint stock company, or association, and such appointment shall be deemed to authorise and empower such attorney to accept service of all writs, process, and summons, requisite or necessary to give complete jurisdiction of any such corporation, joint stock company, or association to any of the courts of this state or United States courts therein and shall be deemed to constitute such attorney the authorized agent of such corporation, joint stock company, or association upon whom lawful and valid service may be made of all writs, process, and summons in any action, suit, or proceeding, commenced by or against any such corporation, joint stock company, or association, in any court mentioned in this section, and necessary to give such court complete jurisdiction thereof. It shall be the duty of every such foreign corporation, joint stock company, or association to maintain at all times within this state, some qualified person as its attorney in fact, as herein provided, and in default thereof, it shall not be entitled to transact any business within this state or maintain any suit, action, or proceeding in its courts. If any attorney of any corporation, joint stock company, or association, appointed under the provisions of this act, shall remove from this state or become disqualified in any manner from accepting service of any writ, process, or summons, or if such corporation, joint stock company, or association shall, at any time, fail to maintain within this state such attorney in fact, valid service may be made on such corporation, joint stock company, or association by service on the secretary of state: provided that in such case the secretary of state shall immediately notify such corporation, joint stock company, or association, including copy of the writ, process, summons, or other papers served on him, by mail, postage paid, to such corporation, joint stock company, or association, at its principal office or place of business, as disclosed in the last report, statement, declaration, or authorization and appointment of attorney in fact filed by it with said secretary of state; and provided further, that in such case no proceedings shall be had, unless such corporation appear, or consents thereto, until forty days after such service on the secretary of state.

**Sec. 7. Foreign corporation, declaration, certificate, annual license fee.** Every foreign corporation, and every foreign joint stock company or association, formed for the purpose of gain, and not heretofore lawfully transacting business in the state, shall, before transacting business in this state, file with the secretary of state a written declaration of its desire and purpose to engage in business within this state, and must set forth a full name under which it proposes to transact business, the name of the state or country under whose laws it was organised, the location of its home office, the date of its formation or incorporation, the amount of its capital stock, the nature of the pursuit, business, or occupation in which it is authorized to engage, the location of its principal office within this state, the name of its attorney in fact, who shall be constituted and appointed in accordance with section 6 of this act, the names and addresses of its principal officers, and of its directors or trustees, and the name and residence of its general agent within the state of Oregon; and said declaration shall be accompanied by a certified copy of the charter or articles of incorporation of such foreign corporation, joint stock company, or association, certified to by the legal keeper of the original, together with a certificate of the secretary of state of a state or territory of the United States, or of a United States ambassador, minister, consul general, vice-consul, or chargé d'affaires in a foreign country under whose jurisdiction such corporation, joint stock company, or association was formed, that such

certifying officer has the requisite official knowledge as to whether such charter or articles of incorporation are of a genuine, valid, and subsisting character, and that such a copy is duly certified by the officer having the legal custody of the original. Upon presentation of the declaration certificates aforesaid to the secretary of state, the person or persons presenting the same shall therewith pay to said secretary the sum of fifty dollars for filing and recording the same, together with the annual license fee due for the succeeding fraction of the fiscal year; and the secretary of state shall thereupon, if he find the same satisfactory in substance and form, cause such declaration to be filed and recorded in the same manner as articles of incorporation of domestic corporations are recorded in his office, and the documentary evidence accompanying such declaration shall be filed and suitably entered in the office of the secretary of state. Upon compliance with the foregoing requirements by any such foreign corporations, joint stock company, or association, the secretary of state shall issue to it a certificate setting forth, in substance, that such corporation, joint stock company, or association, has filed a declaration, hereinbefore required, the date of such filing, and a recital of the other facts in such declaration together, with the fact that such corporation, joint stock company, or association has furnished to the secretary of state satisfactory evidence of the legal existence of such foreign corporation, joint stock company, or association, and of its authority under the law of its domicile to engage in the occupation, business, or pursuit stated in said declaration and which shall be specified in such certificate. Such certificate shall be prima facie evidence on the legal existence of such foreign corporation, joint stock company, or association, and of its right to begin the transaction of the business specified within the state of Oregon, whether the same shall be questioned in any court of justice in this state, or before any commission, board, officer, magistrate, or inferior tribunal whatsoever; provided, that where said certificate shall be produced in any court of justice, or before any commissioner, board, officer, magistrate, or inferior tribunal, the same shall not be admissible in evidence, or have the force or effect hereinbefore stated, unless it shall be accompanied by the receipt of the state treasurer of the state of Oregon showing the payment in full of the last annual license fee which shall have become due and payable against such corporation, joint stock company, or association, prior to the offering of such certificate in evidence, or a certificate of said officer that no such fee is due. Upon application to him for that purpose, the state treasurer shall issue such certificate in accordance with the facts. Foreign fire, marine, fire and marine, life, accident, life and accident, plate glass, and steam-boiler insurance companies, or surety companies, which shall comply with all other laws of this state, exacting fees, license, or taxes, shall not be required to pay the fee of fifty dollars, hereinbefore mentioned.

**Sec. 8. Declaration, failure to file, penalty.** Every foreign corporation and every foreign joint stock company or association formed for the purpose of gain, which shall have heretofore lawfully engaged in the transaction of business within the state of Oregon, shall file with the secretary of state, the declaration referred to in section 7 of this act within six months from the passage of this act, and shall thereupon pay to the secretary of state the fee required by said section, and in default thereof, shall not be permitted to maintain any suit, action, or proceeding in any court of justice in this state until such declaration shall have been filed and such fee paid; provided, that foreign fire, marine, fire and marine, life, accident, life and accident, plate glass and steam-boiler insurance companies, or surety companies, which shall comply with all other laws of this state exacting fees, licenses, or taxes, shall not be required to pay the fee of fifty dollars, hereinbefore mentioned.

**Sec. 9. Annual license fee, failure to pay; penalty.** No domestic corporation, and no foreign corporation, joint stock company, or association, which shall have failed to pay the last annual license fee, or any other tax or fee which shall have become due and payable against it, as provided in this act or any law of this state, shall be permitted to maintain any suit, action, or proceeding in any court of justice within this state while such delinquency shall continue; and it shall be the duty of the state treasurer to furnish the secretary of state, at the time that any such annual license fee or other tax of a corporation or joint stock company or association shall become delinquent, a list of such delinquencies, containing the name of the corporation, joint stock company, or association, the amount of the tax or license fee delinquent, and such list shall be filed in the office of the secretary of state as a public record, and the name of any corporation or joint stock company or association may be stricken there-

from upon payment by such corporation or company or association of the amount of such delinquency, and any annual tax or taxes, or license fee or fees, with interest thereon at the rate of six per cent. per annum, which shall have become due therefrom after the preparation of such list. While such delinquency shall continue, the right of such delinquent corporation, company, or association to transact business shall be deemed to be in abeyance, and such corporation, joint stock company, or association shall not be permitted to maintain any suit; action, or proceeding in any court of justice in this state; but the said delinquency of such corporation or joint stock company or association shall not operate to impair or delay the right of any other person, firm, or corporation. The certificate of the secretary of state, under the seal of the state, that any corporation, joint stock company, or association is in default in the payment of any tax or license fee, shall be conclusive evidence of such delinquency in any court of justice, or before any board, commission, magistrate, officer, or inferior tribunal, subject to be overcome, however, by like certificate that such delinquent tax or license fee, with interest and penalty, has been paid since the issuing of the certificate of delinquency.

**Sec. 10. Delinquent corporation, plea.** A plea that any domestic corporation or foreign corporation, joint stock company, or association has not paid any tax or fee required by any law of this state, and which is then due and payable, may be interposed at any time before trial upon the merits in any action, suit, or proceeding, and if issue be joined upon such plea, the same shall be first tried. Such plea can not be made at any time by the delinquent corporation, joint stock company, or association.

**Sec. 11. Fees collected to be paid to state treasurer.** All fees and payments of every description, required by this act to be made to the secretary of state, shall be paid by him to the state treasurer on the first day of the calendar month following their receipt by the secretary of state, and all fees, taxes, and payments required by this act shall become a part of the general fund of the state.

**Sec. 12. Statements and reports filed, public records.** All statements, reports, and data of every description required by this act to be furnished to the secretary of state, shall be suitably filed and indexed in his office, and shall be deemed public records.

**Sec. 14. Oath, false affirmation, perjury.** Wherever a document is required by this act to be sworn to or verified by an oath, an affirmation shall be deemed equivalent thereto, and a false affirmation is to be deemed perjury equally with a false oath.

---

### Bellinger & Cotton's Ann. Codes, 1901.

---

**Sec. 5112. Owner of vessel, when deemed foreign corporation.** The owner or owners of any vessel propelled in whole or in part by steam, owned without this state, and engaged in navigating the waters of this state, or plying between any port of this state and any port or place without this state, is a foreign corporation within the meaning of this chapter; and the resident agent of such vessel is the attorney of such corporation within the meaning of this chapter, and shall pay into the county treasury of the county in which he resides the sum of twenty-five dollars per quarter as such agent or attorney, and upon the production of the county treasurer's receipt for such sum the county clerk shall issue a license to such agent or attorney to act as such for the ensuing three months from the date of such license.

**Sec. 5113. Compensation of county treasurer and clerk issuing license.** Each county treasurer shall be entitled to receive and retain three per centum of all moneys received by him under this chapter, and each county clerk shall be entitled to demand and receive from the person applying for such license the sum of two dollars for issuing the same.

**Sec. 5114. County clerk to record license and transmit copy to secretary of state.** The county clerk shall record all licenses issued by him under the provisions of this chapter, specifying therein the date of such license, the amount of quarterly tax, to whom issued, and for what purpose. On the first day of each month, such clerk shall prepare and transmit to the secretary of state a certified copy of such record.

**Sec. 5115. Acting as agent of vessel without license, penalty and recovery of.** Any person who shall act as agent or attorney for any vessel without having first

obtained the license prescribed in this chapter shall forfeit and pay to the state of Oregon the sum of one hundred dollars, to be recovered by action in the name of the state as other fines and penalties are recovered.

**Sec. 5116. Agent of vessel, who deemed.** Any person who acts or professes to act as the agent representative or business man of any vessel mentioned in section 5112 within this state, shall be deemed the agent or attorney thereof within the meaning of this chapter.

**Sec. 5121. Foreign corporations, no greater rights than domestic.** Nothing in this act contained shall be so construed as to give to any foreign corporation or corporations any other or further rights, powers, or privileges than may be acquired or exercised by corporations incorporated under the laws of this state; but only so as to give to foreign corporations the same rights, powers, and privileges, on a compliance with the laws of this state, as may be acquired or exercised by corporations incorporated under the laws of this state.

**Sec. 5391. Aliens and foreign corporations may hold land.** Any alien may acquire and hold lands, or any right thereto, or interest therein by purchase, devise, or descent, and he may convey, mortgage, and devise the same, and if he shall die intestate, the same descend to his heirs, and in all cases such lands shall be held, conveyed, mortgaged, or devised, or shall descend in like manner and with like effect, as if such alien were a native citizen of this state or of the United States; and any corporation incorporated under the laws of any other state in the United States, or of any foreign country, not prohibited by the constitution or laws of this state from carrying on business in this state, may acquire, hold, use, and dispose of, in the corporate name, all real estate necessary or convenient to carry into effect the object of the incorporation and the transaction of its business, and also any interest in real estate by mortgage or otherwise, as security for moneys due to or loans by such corporation.

## Rhode Island.

### Laws, 1909, c. 300.

**Sec. 42. Foreign corporations to comply with secs. 43—48.** No corporation, unless incorporated by the general assembly of this state, or under general law of this state, excepting national banking associations or other corporations existing under the laws or by the authority of the United States, shall carry on within this state the business for which it was incorporated, or enforce in the courts of this state any contract made within this state, unless it shall have complied with the following sections of this chapter.

**Sec. 43. Resident attorney to be appointed to accept service of process, and make affidavit and enter appearance.** Every such foreign corporation shall appoint by written power some competent person, resident in this state, as its attorney, with authority to accept service of all process against such corporation in this state, and upon whom all process, including the process of garnishment against such corporation in this state may be served, and who, in case of garnishment, when the fees therefor shall have been paid or tendered, shall make the affidavit required by law in such cases, and who shall cause an appearance to be entered in like manner as if such corporation had existed and been duly served with process within this state.

**Sec. 44. Certified copy of power of attorney to be filed with secretary of state. Certified copies to be received in evidence.** A copy of such power of attorney, duly certified and authenticated, shall be filed with the secretary of state; and copies thereof, duly certified, shall be received in evidence in all courts of this state.

**Sec. 45. Attorney to be maintained by appointment from time to time.** If such attorney shall die, or resign, or be removed, the corporation shall make a new appointment as aforesaid and file a copy with the secretary of state as above prescribed, so that at all times there shall be within this state an attorney authorized to accept service of process and to enter an appearance as aforesaid; and no such power of attorney shall be revoked until after a like power shall have been given to some other competent person resident in this state, and a copy thereof filed as aforesaid.

**Sec. 46. Service on attorney binds the principal.** Service of process upon such attorney shall be deemed sufficient service upon his principal.

**Sec. 47. Penalty for acting as agent or officer of such corporation if attorney is not appointed.** No person shall act within this state, as agent or officer of any foreign corporation, unless such corporation shall have appointed an attorney as hereinbefore provided, and every person so acting shall be fined one thousand dollars.

**Sec. 48. Foreign insurance companies excepted.** The preceding six sections shall not be held to apply to foreign insurance companies doing business in this state, but such companies shall continue to be governed by chapter two hundred and twenty.

## South Carolina.

### Code of Laws, 1902.

**Sec. 1779. Rights and privileges granted to foreign corporations.** Foreign corporations duly incorporated under the laws of any state of the United States, or of any foreign country in treaty and amity with the said United States, are hereby permitted to locate and carry on business within the state of South Carolina in like manner and with like powers as corporations of like kind and class created under the laws of this state, subject, nevertheless, to the terms and conditions in this chapter hereafter set forth.

**Sec. 1780. Times for act to apply. Stipulation to be filed. Location. Service of legal papers.** Any and every such foreign corporation owning property or doing business in this state on the 1st day of July, 1894, and any and every such foreign corporation which shall acquire property or commence to do business in this state after the 1st day of July, 1894, shall, within sixty days after so acquiring any property or commencing to do business in this state, file in the secretary of state's office in this state a written stipulation or declaration, in due form, designating some place within this state as the principal place of business or place of location of said corporation in this state at which all legal papers may be served on said corporation by the delivery of the same to any officer, agent or employee of said corporation found thereon; or if none such be found thereon, then by leaving copies of the same on the premises, and that such services shall have like force and effect in all respects as service upon citizens of this state found within the limits of the same.

**Sec. 1781. Copy of charter and by-laws. Sworn statement. Contents.** In addition to the same, said corporations are hereby required to file in the office of the secretary of state, together with the written stipulation or declaration aforesaid, copies of their charter and by-laws, with all amendments of the same that may from time to time be made, within sixty days from the date of making the same. In addition thereto, the said corporations are required to file annually, in the office of the secretary of state, on or before the thirty-first day of January, a statement, sworn to by some officer of the corporation, showing the residence and post office address of such corporation, the amount of capital stock of the same actually paid and the names of the president and secretary (if there be any such) and the board of directors, with their respective places of residence and post office addresses.

**Sec. 1782. Copies to be furnished. And received in evidence.** Any person applying for the same shall be entitled to copies, duly certified, of all the foregoing papers required to be filed upon payment of the customary fees, and the same shall be admitted in the courts as competent evidence of all matters appearing thereon.

**Sec. 1783. Corporation failing to file certain papers; penalty.** Any such foreign corporation failing to file any of the papers hereinbefore required to be filed, shall be liable to a forfeiture of five hundred dollars to the state, to be recovered at the suit of the state in the court of common pleas for any county in the state.

**Sec. 1784. Foreign corporations doing business in this state subject to the jurisdiction of the courts of the state.** In addition to all conditions now required by law, it shall be a further condition precedent to the right of any corporation created by or under the laws of any state of the American Union or of the District of Columbia, or of any foreign government, to do business in this state, that all actions or suits arising out of the business or dealings of such foreign corporation with any citizen or corporation of this state, or pertaining thereto, commenced in the courts of this state, shall be tried therein, any usage or law to the contrary notwithstanding.

**Sec. 1785. Submission to the jurisdiction of the state courts a condition precedent to do business in the state.** It shall be a further condition precedent to the right

of any such foreign corporation to do business in this state, that it shall be taken and deemed to be a part and parcel of all contracts entered into between such foreign corporations and a citizen or corporation of this state, and of the essence of such contracts, that all suits or actions of every kind whatsoever arising out of such contracts or pertaining to the same commenced in the courts of this state shall be tried therein, any usage or law to the contrary notwithstanding.

**Sec. 1786. The above conditions declared to be the essence of all contracts with foreign corporations.** It shall be a further condition precedent to the right of any such corporation to do business in this state, that it shall be deemed and taken to be a part and parcel of all contracts entered into between such corporations and a citizen or corporation of this state, and of the essence of such contracts, that in all suits or actions arising out of such contracts, or pertaining thereto, the courts of this state shall have exclusive jurisdiction thereof where such actions or suits are commenced in the courts of this state, saving to any party to such action or suit the right of appeal to the supreme court of the United States as may be provided by law.

**Sec. 1787. Additional condition precedent of foreign corporations doing business in this state.** It shall be a further condition precedent to the right of any such corporation to do business in this state, that it shall be taken and deemed to be the fact, irrebuttable, and part and parcel of all contracts entered into between such corporation and a citizen or corporation of this state, that the taking or receiving, from any citizen or corporation of this state, of any charge, fee, payment, toll, impost, premium, or other moneyed or valuable consideration, under or in performance of any such contract, or of any condition of the same, shall constitute the doing of its corporate business within this state, and that the place of the making and of performance of such contract shall be deemed and held to be within this state, anything contained in such contract or any rules or by-laws of such corporation to the contrary notwithstanding.

**Sec. 1788. All corporations doing business in this state shall be deemed as doing business under this act.** All such corporations hereafter doing business in this state, as defined in this chapter, shall be deemed and held to be doing such business under and in pursuance of the terms and conditions of this chapter, and that such terms and conditions shall be deemed and taken in all the courts of this state to be a part and parcel of all contracts hereafter entered into between such corporations and a citizen or corporation of this state, anything contained in any such contract or in any rules or by-laws of such corporation to the contrary notwithstanding.

**Sec. 1789. Administration of assets of foreign corporation.** It shall and may be lawful for any court of competent jurisdiction in this state to take possession of, wind up, administer and marshal the assets in this state of any such foreign corporation (in like manner and in like cases as by law may be done with respect to corporations chartered under the laws of the state) for the protection of any and all citizens of this state who may be stockholders or creditors of such foreign corporations, as in the case of legatees and creditors (citizens of this state) of deceased persons whose domicile was, at the time of their decease, outside this state, in respect to assets within this state.

**Sec. 1790. Subject to laws. Limitations.** All and every such foreign corporation carrying on business or owning property in this state shall be subject to the laws of the same in like manner as corporations chartered under the laws of this state, but nothing herein contained shall be construed to permit any such foreign corporation to exercise any franchise or enjoy any privilege or immunity other than the right to own property and carry on business in like manner as individuals, natural born citizens of such state of the United States or of foreign countries, might do, and subject to the terms and conditions of this chapter.

**Sec. 1792. Charters of.** If any such charter, or any part thereof, filed as aforesaid in the office of the secretary of state, shall be in contravention or violation of the laws of this state, such charter, or such parts thereof so in conflict with the laws of this state, shall be null and void.

**Sec. 1793. Compliance with this act makes a domestic corporation.** When a foreign corporation complies with the provisions and requirements of this chapter, it shall ipso facto become a domestic corporation, and shall enjoy the rights and be subject to the liabilities of such domestic corporation; it may sue and be sued in

the courts of this state, and shall be subject to the jurisdiction of this state as fully as if it were originally created under the laws of the state of South Carolina.

**Sec. 1794. Foreign companies must comply.** It shall be unlawful for any such foreign corporation to do business, or attempt to do business, in this state without first having complied with the requirements of this chapter, and any violation of this chapter shall be punished by the forfeiture to the state, by the party offending, of a penalty of five hundred dollars, to be recovered by suit in the court of common pleas for any county in which such offender does, or attempts to do, business, or in any other court of competent jurisdiction.

**Sec. 1795. Aliens can only hold 500 acres land. Exception. Not to affect vested rights.** No alien, or corporation controlled by aliens, either in his or its own right, or as trustee, cestui que trust, or agent, shall own or control, within the limits of this state, more than five hundred acres of land: Provided, this section shall not apply to land purchased under proceedings, either by action or power of sale, to foreclose any mortgage hereafter acquired by any lien or corporation controlled by aliens, purchasing the same, but in such case such alien, or corporation controlled by aliens, shall not be entitled to hold said excess of land more than five years, without sale of same, unless the comptroller general shall certify that a sale during that time would be materially detrimental to the interest of such alien or corporation controlled by aliens, in which case the said alien or corporation controlled by aliens, may hold the land for five years longer upon the same conditions.

Nothing in this section shall apply to lands already owned or controlled by the persons or corporations referred to in this section nor to lands already mortgaged to such persons or corporations.

## South Dakota.

### Constitution.

#### Article XVII. Corporations.

**Sec. 6.** No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same upon whom process may be served.

### Civil Code.<sup>1)</sup>

**Sec. 883. Certificate to be filed.** No corporation created or organized under the laws of any other state or territory shall transact any business within this state, or acquire, hold, and dispose of property, real, personal, or mixed, within this state, or sue or maintain any action at law or otherwise, in any of the courts of this state, until such corporations shall have filed in the office of the secretary of state a duly authenticated copy of its charter or articles of incorporation, or shall have complied with the provisions of this section; provided, that the provisions of this section shall not apply to corporations and associations created for religious and charitable purposes only.

**Sec. 884. And recorded.** Such charter or articles of incorporation shall be recorded in a book to be kept by the secretary of this state for that purpose.

**Sec. 885. Resident agent.** Such corporation shall appoint an agent who shall reside at some accessible point in this state, duly authorized to accept service of process and upon whom such service of process may be had in any action in which said corporation may be a party, and service upon such agent shall be taken and held as due and personal service upon such corporation. A duly authenticated copy of the appointment of said agent shall be filed and recorded in the office of the secretary of state and register of deeds of the county where such agent resides, and a certified copy thereof by the secretary of state or register of deeds shall be conclusive evidence of the appointment and authority of such agent; provided, that no action shall be commenced or maintained in any of the courts of this state by such corporation on any contract, agreement, or transaction made or entered into in this state, by such corporation, unless such cor-

<sup>1)</sup> Service of process is made in the same manner as on domestic corporations.



poration shall have fully complied with the provisions of this article; provided, further that it shall be unlawfull for any person to act within this state as agent or officer of any foreign corporation unless such corporation shall have appointed an agent as hereinbefore provided, and every person so acting as such agent or officer of any such corporation shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten nor more than one hundred dollars and imprisoned in the county jail not less than ten nor more than thirty days or both such fine and imprisonment at the discretion of the court. That justices of the peace shall have concurrent jurisdiction with the circuit courts to hear and determine any criminal action arising under the provisions of this act.

### Tennessee.

## **Acts, 1877, c. 31. An Act to declare the Terms on which Foreign Corporations organized for Mining or Manufacturing Purposes may carry on their Business, and purchase, hold and convey Real and Personal Property in this State.**

**Sec. 1. Rights of foreign corporations.** Corporations chartered or organized under the laws of other states, or countries, for the purpose of mining ores or coals, or of quarrying stones or minerals, of transporting the same, or erecting, purchasing, or carrying on works for the manufacture of metals, or of any articles made of or from metal, timber, cotton, or wool, or of building dwelling houses for their workmen and others, or gas works, or waterworks, or other appliances designed for the promotion of health, good order, or general utility, in connection with such mines, manufactories, and dwelling houses, may become incorporated in this state, and may carry on in this state the business authorized by their respective charters, or the articles under which they are or may be organized, and may enjoy the rights and to do the things therein specified, upon the terms and conditions, and in the manner and under the limitations herein declared.

**Sec. 2. Certificate to be filed.** Each and every corporation created or organized under or by virtue of any government other than that of this state, of the character named in the first section of this act, desiring to carry on its business in this state, must first file in the office of the secretary of state a copy of its charter or articles of association, certified in the manner directed by law for the authentication of the statutes of the state or country under whose laws such corporation is chartered or organized, and must cause an abstract of the same to be recorded in the office of the register of each county in which such corporation proposes to carry on its business or to acquire any lands.

**Sec. 3. Deemed to be domestic corporations.** Such corporations shall be deemed and taken to be corporations of this state, and shall be subject to the jurisdictions of the courts of this state, and may sue and be sued therein in the mode and manner that is, or may be, by law directed in the case of corporations created and organized under the laws of this state.

**Sec. 4. May hold real estate.** Such corporations may purchase, acquire, and hold real estate in fee or any other interest less than the fee, and personal property of every kind, as they may deem necessary or suitable for the carrying on of the business specified in their said charters or articles of association, filed as aforesaid with the secretary of state, and may sell, lease, and convey such real estate as natural persons may do. And the state of Tennessee does hereby release its right of escheat by virtue of the alien origin of such corporations, or the alienage or nonresidence of the shareholders of such corporation, or any of them.

**Sec. 5. Liability for debts.** The corporations, and the property of all corporations coming under the provisions of this act, shall be liable for all the debts, liabilities, and engagements of the said corporations, to be enforced in the manner provided by law, for the application of the property of natural persons to the payment of their debts, engagements, and contracts. Nevertheless, creditors who may be residents of this state shall have a priority in the distribution of assets or subjection of the same or any part thereof, to the payment of debts over all simple contract creditors, being residents of any other country or countries and also over mortgage or judgment credi-

tors, for all debts, engagements, and contracts which were made or owing by the said corporations previous to the filing and registration of such valid mortgages, or the rendition of such valid judgments. But all such mortgages and judgments shall be valid, and shall constitute a prior lien on the property on which they are or may be charged as against all debts which may be incurred subsequent to the date of their registration or rendition. The said corporations shall be liable to taxation in all respects the same as natural persons resident in this state, and the property of its citizens is or may be liable to taxation; but to no higher taxation, nor to any other mode of valuation, for the purpose of taxation; and the said corporations shall be entitled to all such exemptions from taxation which are now or may be hereafter granted to citizens or corporations for the purpose of encouraging manufactures in this state or otherwise.

**Sec. 6. Mining corporations.** Such of said corporations as shall engage in the mining of coals, iron ore, or other minerals and in the manufacture of iron and other metals, shall have the right to construct and maintain roads, bridges, canals, tramways, telegraph lines, and railroads between their mines and their places of manufacture, and for purposes of inlet or outlet to or from any railroad now or hereafter to be constructed, or to any river or waterway at the point or place most convenient for its operation and its business, and for this purpose such a corporation may purchase or acquire the necessary rights of way by contract with the owner or owners of the said lands on which the right of way is desired.

**Sec. 7. Must begin operations.** All corporations coming under the provisions of this act shall, in good faith and truly, within one year after filing with the secretary of state the certified copy of the charter or articles of association as hereinbefore provided, begin and proceed with the business described in the said charter or articles of association so filed, and shall in good faith continue the same under the powers of said corporation in this said charter or articles of association as in this act declared; it being a chief object of this act to secure the opening and development of the mineral resources of the state, and to facilitate the introduction of foreign capital and upon the failure of any such corporation to commence in good faith to develop and work some portion of its property within this state within one year after filing its said charter or articles of association in the office of the secretary of state, all rights and privileges conferred by this act shall lapse and become void and of no effect.

**Sec. 8. Further as to powers.** Any corporation obtaining and having the privileges of this act may establish towns, villages, or settlements for the use and residence of its employes and others, on any lands acquired by virtue of this act, and until the population is sufficiently large for the formation of municipal corporations in any of such towns or villages, may establish such regulations for the government thereof as shall not be inconsistent with the laws of this state; and it shall not be lawful for any person or persons (except for medical uses as evidenced by the written order of some duly certified medical practitioner), nor for any corporation, to distill, have, make, sell, barter, or give away, any spirituous liquor or intoxicating drink of any kind, whether described as bitters, or by any other name that may be used to disguise its real nature, or to evade the provisions of this act, upon any lands acquired by any corporation under this act, nor within the radius of five miles (except within the boundaries of any incorporated town), from any mine or quarry or of any furnace, rolling mill, foundry, or factory of any kind established or purchased by any corporation under this act, so long as such mine, quarry, furnace, rolling mill, foundry, or factory is actually worked, or held for the purpose of being worked, or whilst under construction, and all the provisions and restrictions of chapter 112 of the acts of the legislature of Tennessee, 1871, passed 14th December, 1871, are hereby declared applicable to all corporations organized under this act; and all persons violating any of the provisions of this section of this act shall be punished as declared in the said act of 1871.

**Sec. 9. Operation of charter.** If any such charter or articles of association, or any part thereof, filed as aforesaid in the office of the secretary of state, should be in contravention or violation of the laws of this state, all such parts thereof as may be found to be in conflict with the laws of this state shall be null and void.

**Acts, 1891, c. 122.** An Act to amend Chapter 31 of the Acts of 1877, declaring the Terms on which Foreign Corporations organized for Mining or Manufacturing Purposes may carry on their Business and purchase, hold, and convey Real and Personal Property in this State, so as to make the Provisions of said Act apply to all Foreign Corporations that may desire to own Property or to do Business in this State.

**Sec. 1. Application of Act of 1877.** Chapter 31 of the acts of 1877 be so amended and enlarged as that the provisions of said act shall apply to all corporations chartered or organized under the laws of other states or countries for any purpose whatsoever which may desire to do any kind of business in this state.

**Sec. 2. Certificate to be filed.** Each and every corporation created or organized under, or by virtue of, any government other than that of the state, for any purpose whatever desiring to own property, or carry on business in this state of any kind or character, shall first file, in the office of the secretary of state, a copy of its charter. It shall be sufficient to authenticate such copies so filed by the certificate of the secretary, or secretaries, of such corporations, and by attaching thereto the corporate seal.

**Sec. 3. Penalty.** It shall be unlawful for any foreign corporation to do business, or attempt to do business, in this state without first having complied with the provisions of this act, and a violation of this statute shall subject the offender to a fine of not less than \$100 nor more than \$500 in the discretion of the jury trying the case.

**Sec. 4. Deemed domestic corporation.** When a corporation complies with the provisions of this act said corporation may then sue and be sued in the courts of this state, and shall be subject to the jurisdiction of this state as fully as if it were created under the laws of the state of Tennessee; provided that this act shall not affect any contracts or remedy heretofore made by foreign corporations not having complied with the existing laws on the subject.

**Sec. 5. Service of process.** When such corporation has no agent in this state upon whom process may be served by any person bringing suit against such corporation, then it may be proceeded against by an attachment to be levied upon any property owned by the corporation, and publication, as in other attachment cases. But for the plaintiff to obtain an attachment he, his agent or attorney, need only make oath of the justness of his claim, that the defendant is a corporation organized under this act, and that it has no agent in the county where the property sought to be attached is situated upon whom process can be served.

## Texas.

### Rev. St. 1895.

**Sec. 642. Paid-up capital.** Foreign corporations obtaining permits to do business in this state shall show to the satisfaction of the secretary of state that at least \$100,000 in cash of their authorized capital stock has been paid in, or that 50 per cent. of their authorized capital stock has been subscribed and at least 10 per cent. of the authorized capital has been paid in, before such permit is issued. [Subdivision 56, Acts of 1901, p. 19.]

**Sec. 745. Filing.** Hereafter any corporation for pecuniary profit, except as hereinafter provided, organized or created under the laws of any other state, or of any territory of the United States, or of any municipality of such state or territory, or of any foreign government, sovereignty, or municipality, desiring to transact business in this state, or solicit business in this state, or establish a general or special office in this state, shall be and the same is hereby required to file with the secretary of state, a duly certified copy of its articles of incorporation, and thereupon the secretary of state shall issue to such corporation a permit to transact business in this state. If such corporation is created for more than one purpose, the permit may be limited to one or more purposes; and such corporation, on obtaining such permit, shall have and enjoy all the rights and privileges conferred by the

laws of this state on corporations organized under the laws of this state, and shall be authorized and empowered to hold, purchase, sell, mortgage, or otherwise convey such real estate and personal estate as the purposes of such corporation may require, and also to take, hold, and convey such other property, real, personal, or mixed, as may be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due, or which may become due, or belonging to the corporation; provided, that if such corporation so obtaining a permit to do business in this state shall acquire any real estate under the powers therein conferred, it shall alienate all real property so acquired by it not necessary for the purposes of such corporation, within fifteen years from the time of acquisition; and provided further, that such corporation shall alienate all real estate acquired by it for the purposes of such corporation, within fifteen years from the expiration of the time for which the permit is issued, or if such permit be renewed, or such corporation be otherwise authorized to carry on business in this state, then such corporation shall alienate such real estate within fifteen years after the expiration of the time for which such permit is extended, or it is so authorized to carry on business in this state; and provided further, that if such corporation shall cease to carry on business in this state, that it shall alienate all such real estate so acquired by it, within fifteen years after the time it shall so cease to carry on business in this state. [Acts of 1897, p. 167.]

**Sec. 746. Penalty.** No such corporation can maintain any suit or action, either legal or equitable, in any of the courts of this state, upon any demand, whether arising out of contract or tort, unless at the time such contract was made or tort committed the corporation had filed its articles of incorporation under the provisions of this chapter in the office of the secretary of state for the purpose of procuring its permit.

**Sec. 747. Application of chapter.** The provisions of this chapter shall not apply to corporations created for the purpose of constructing, building, operating, or maintaining any railway or to such corporations as are required by law to procure permits to do business from the commissioner of agriculture, insurance, statistics, and history.

**Sec. 748. Period of permit.** No permit shall be issued for a longer period than ten years from the date of filing such articles of incorporation in the office of the secretary of state.

**Sec. 749.** Either the original permit or certified copies thereof by the secretary of state shall be evidence of the compliance on the part of any corporation with the terms of this chapter. A certificate of the secretary of state to the effect that the corporation named therein has failed to file in his office its articles of incorporation shall be evidence that such corporation has in no particular complied with the requirements of this chapter.

**Sec. 2439. Trust affidavit.** A condition precedent to the issuance by the secretary of state of a permit to any foreign corporation authorizing it to do business in this state, the president, vice-president, secretary, or treasurer, or two of the directors of such corporation shall make and subscribe an affidavit in writing stating that such corporation is not a trust or organization in restraint of trade in violation of the laws of this state, has not, within twelve months next preceding the making of such affidavit become or been a party to any trust agreement of any kind or character whatsoever, which would constitute a violation of any anti-trust law of the state existing at the date of such affidavit, and has not within that time entered into or been in anywise a party to any combination in restraint of trade within the United States of America, and that no officer of such corporation has, within the knowledge of affiant within twelve months next preceding the date of such affidavit, made on behalf of such corporation or for its benefit any such contract, or entered into or become a party to any such combination in restraint of trade. Such affidavit in writing shall be personally subscribed and sworn to by such affiant or affiants, before some officer who is by law duly authorized to administer oaths and the jurat of such officer shall be attested by his official signature and the seal of office, and such affidavit in writing so attested shall be filed in the office of the secretary of state before the issuance of any such permit. [Acts of 1907, p. 501.]

## **Acts, 1907, c. 23. An Act prescribing Franchise Taxes, etc.**

**Sec. 11. Surrender of permit.** Should any foreign corporation which may have or hereafter obtain a permit to do business within this state desire at any time to withdraw from doing business in this state it may surrender such permit to the secretary of state, who shall thereupon mark or stamp such permit "Surrendered," dating and signing same officially, and shall endorse upon the record of such permit in his office the word "Surrendered" and the date thereof, and thereafter such corporation may by complying with the provisions of this act secure a new permit to do business in this state without having made any further payment of franchise tax under such old permit.

## **Utah.**

### **Constitution.**

#### **Article XII. Corporations.**

**Sec. 6. Privileges of foreign corporations.** No corporations organized outside of this state shall be allowed to transact business within the state on conditions more favorable than those prescribed by law to similar corporations organized under the laws of this state.

**Sec. 9. Place of business, process agent, etc.** No corporation shall do business in this state, without having one or more places of business, with an authorized agent or agents, upon whom process may be served, nor without first filing a certified copy of its articles of incorporation with the secretary of state.

### **Comp. Laws, 1907.**

**Sec. 351. Must file articles. Other duties.** All corporations, not organized under the laws of this state, before doing business within the state shall file with the secretary of state and with the county clerk of the county wherein their principal office in the state is situated a certified copy of their articles of agreement, certificate of incorporation, and by-laws and in case of alteration or amendment of said articles of incorporation or by-laws, shall file certified copies of such alterations or amendments with each of said officers, and shall also, before doing business within the state, by resolution of their board of directors, accept the provisions of the constitution of this state, and also designate some person residing in the county in which its principal place of business in the state is situated, upon whom process issued by authority of or under any law of the state may be served. A copy of such resolution, shall be certified by the president and secretary, under seal of the company, and filed in the office of the secretary of state and in the office of the county clerk of the county in which its principal office is situated.

**Sec. 352. Foreign corporation failing to comply.** Any such corporation failing to comply with the provisions of the foregoing sections shall not be entitled to the benefits of the laws of this state relating to corporations; and any person acting as agent of a foreign corporation which shall neglect or refuse to comply with the foregoing provisions, shall be deemed guilty of a misdemeanor, and shall be personally liable on any and all contracts made, in this state by him for and in behalf of such company during the time that it shall remain so in default; provided that this section shall not be held to apply to persons acting as agents for foreign corporations for special or temporary purpose or for a purpose not within the ordinary business of such corporations, nor shall it apply to attorneys-at-law as such.

## **Laws, 1909, c. 20. Authorizing Foreign Corporations to exercise the Power of Eminent Domain.**

**Sec. 1. Foreign corporations authorized to exercise the power of eminent domain.** Foreign corporations upon complying with the provisions of the laws of this state

prescribing the conditions upon which such corporations are authorized to do business in this state, shall have the same powers of eminent domain as are granted by law to domestic corporations.

## Vermont.

### Pub. St. 1906.

**Sec. 774. Certificate required.** No foreign corporation, except railroad corporations and such corporations as are subject to the supervision and examination of the insurance commissioners and bank commissioner and which are, by the provisions of this chapter, required to pay to this state an annual license tax, shall do business herein, except as provided in the following section, without having first procured from the secretary of state a certificate that it has complied with all the requirements of law to authorize it to do business in this state and that the business of the corporation to be carried on in this state is such as may be lawfully carried on by a corporation incorporated under the laws of this state for such or similar business. The secretary of state shall deliver such certificate to a corporation so complying with the requirements of law, upon payment of the fees provided for in this chapter. No certificate of authority shall be granted to a foreign corporation having the same name as that assumed in any domestic charter or articles of association then in force.

**Sec. 775. Former contracts.** A contract made by such corporation previous to January 31, 1903, may be performed and enforced within this state, although such corporation has not procured such certificate.

**Sec. 776. Actions by foreign corporations prohibited.** No foreign corporation mentioned in the second preceding section shall, except as provided in the preceding section, maintain any action in this state upon any contract made by it in this state, unless, prior to the making of such contract, it has procured such certificate. This prohibition shall also apply to an assignee of such foreign corporation, and to a person claiming under such assignee or such corporations.

**Sec. 777. Chancery proceedings.** If such foreign corporation carries on any business in this state whereby it becomes liable to the annual license tax, without first obtaining such certificate or after such certificate is revoked as hereinafter provided, or if such foreign corporation refuses or neglects to pay its annual license tax on or before thirty days from the date on which such tax becomes payable, the commissioner of state taxes, may make complaint to the court of chancery in any county setting forth such facts and praying for a temporary and permanent injunction to restrain such foreign corporation, its officers, servants, and agents, from doing any business in this state on account of which it shall be liable to the payment of the annual license tax, and from exercising any corporate functions or powers within this state except the payment of such tax and the making and filing of proper returns therefor and for registration, and the statements hereinafter required showing the change in its corporate name, and for the designation of a person in lieu of one previously designated who has died or removed from the state.

**Sec. 778. Injunctions, etc.** Such temporary orders and injunctions may be granted therein by any court of chancery or chancellor thereof as shall be just and equitable; and upon final hearing such court shall grant such permanent injunction as in deemed necessary to carry out the provisions of the preceding section.

**Sec. 779. Dismissal.** If such corporation shall, before final decree, comply with the law requiring the procurement of such certificate or the payment of such tax, such complaint may be dismissed upon payment of costs by the defendant.

**Sec. 780. Service.** Service of such complaint upon such foreign corporation may be made by delivering within this state a true and attested copy of such complaint and process thereunder to any officer, servant, or agent of such foreign corporation, or in any manner otherwise provided by law.

**Sec. 781. Designation of agent.** Such foreign corporation shall, before certificate is granted, file with the secretary of state and with the commissioner of state taxes a sworn copy, in the English language, of its charter or certificate of incorporation, and a statement under its corporate seal particularly setting forth the busi-

ness in which the corporation is engaged or which it purposes to carry or within the state, the place herein which is to be its principal place of business, and designating a person residing herein upon whom process against the corporation may be served herein, and to whom notices relating to taxation under this chapter shall be given. The person so designated shall have an office or place of business within this state.

**Sec. 782. Same; vacancies, etc.** Such designation shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom such process may be served, or to whom such notice shall be given. If the person designated dies or removes from the state and the corporation does not, within thirty days after such death or removal, designate in like manner another person upon whom such process may be served within this state and to whom notices relating to taxation under this chapter shall be given, the certificate granted under the provisions of section 774 may be revoked by the secretary of state upon the written application of the commissioner of state taxes, provided it is made to appear to said secretary that a copy of such application was mailed to the home office of such corporation at least fifteen days prior to the date whereon such application was made. Process in an action upon any liability incurred within this state may, after such death or removal and until another designation is made, be served upon said secretary by delivering to him duplicate copies one of which shall be placed on file in his office, and the other immediately forwarded by him by mail prepaid to such corporation at its home office, or to such other person as such corporation shall designate in writing; and there shall be paid to said secretary by the officer serving the same the sum of one dollar. Notices pertaining to taxation may, in like manner, be served upon said secretary, but he shall not receive extra compensation therefor.

**Sec. 783. Certificate of withdrawal.** If a foreign corporation ceases to do business in this state or to exercise its corporate functions herein, it shall file a certificate under its corporate seal stating the exact date whereon it so ceased to do business and such certificate, when filed with the secretary of state and the commissioner of state taxes, shall thereupon vacate the certificate issued to such corporation by said secretary authorizing it to do business in this state.

**Sec. 785. Changing place of business, etc.** Such corporation may, by a statement in writing under its corporate seal, change or discontinue the place within this state previously designated by it at which its principal place of business shall be located.

**Sec. 786. Change of name.** If the name of a foreign corporation has been changed subsequent to the date of the certificate of the secretary of state authorizing it to do business in this state, such corporation shall, within fifteen days after such change of name takes effect, file a statement with said secretary and the commissioner of state taxes setting forth such change of name and the new name adopted.

### **Acts, 1908, No. 117. An Act providing for Publicity of Partnerships, and for the Service of Process against Non-residents.**

[This act requires that persons, partnerships, and corporations carrying on business under a name other than his own, or that of the partners, or that of the corporation, respectively, shall file a statement to that effect. A person or association failing to do so may be enjoined from carrying on business, and is debarred from prosecuting suits in the state courts.]

### **Acts, 1910, No. 54. An Act relating to the Appointment of Agents for Service of Process, etc.**

**Sec. 3. License prerequisite to doing business.** A foreign corporation that has complied with the provisions of section 774 of the public statutes, or a non-resident individual, copartnership, or unincorporated association that has complied with the provisions of section 9 of number 117 of the acts of 1908, shall not be authorized to transact any business specified in such chapters for which a license or certificate is required, until said corporation, individual, copartnership, or unincorporated association shall receive a license or certificate as therein provided

## Virginia.

### Constitution.

---

**Sec. 154. Chartering of corporations.** The creation of corporations, and the extension and amendment of charters (whether heretofore or hereafter granted), shall be provided for by general laws, and no charter shall be granted, amended or extended by special act, nor shall authority in such matters be conferred upon any tribunal or officer, except to ascertain whether the applicants have, by complying with the requirements of the law, entitled themselves to the charter, amendment, or extension applied for, and to issue, or refuse, the same accordingly. Such general laws may be amended or repealed by the general assembly; and all charters and amendments of charters, now existing and revocable, or hereafter granted or extended, may be repealed at any time by special act. Provision shall be made, by general laws, for the voluntary surrender of its charter by any corporation, and for the forfeiture thereof for non-user or mis-user. The general assembly shall not, by special act, regulate the affairs of any corporation, nor, by such act, give it any rights, powers, or privileges.

**Sec. 156. Powers and duties of commission.** a) Subject to the provisions of this constitution and to such requirements, rules, and regulations as may be prescribed by law, the state corporation commission shall be the department of government through which shall be issued all charters and amendments or extensions thereof, for domestic corporations, and all licenses to do business in this state to foreign corporations; and through which shall be carried out all the provisions of this constitution, and of the laws made in pursuance thereof, for the creation, visitation, supervision, regulation, and control of corporations chartered by, or doing business in, this state. The commission shall prescribe the forms of all reports which may be required of such corporations by this constitution or by law; it shall collect, receive, and preserve such reports, and annually tabulate and publish them in statistical form; it shall have all the rights and powers of, and perform all the duties devolving upon, the railroad commissioner and the board of public works, at the time this constitution goes into effect, except so far as they are inconsistent with this constitution, or may be hereafter abolished or changed by law.

**Sec. 157. Laws to be enacted.** Provision shall be made by general laws for the payment of a fee to the commonwealth by every domestic corporation, upon the granting, amendment, or extension of its charter, and by every foreign corporation upon obtaining a license to do business in this state as specified in this section; and also for the payment, by every domestic corporation, and foreign corporation doing business in this state, of an annual registration fee of not less than five dollars nor more than twenty-five dollars, which shall be irrespective of any specific license, or other tax, imposed by law upon such company for the privilege of carrying on its business in this state, or upon its franchise or property; and for the making, by every such corporation (at the time of paying such annual registration fee), of such report to the state corporation commission, of the status, business, or condition of such corporation, as the general assembly may prescribe. No foreign corporation shall have authority to do business in this state, until it shall have first obtained from the commission a license to do business in this state, upon such terms and conditions as may be prescribed by law. The failure by any corporation for two successive years to pay its annual registration fee, or to make its said annual reports, shall, when such failure shall have continued for ninety days after the expiration of such two years, operate as a revocation and annulment of the charter of such corporation if it be a domestic company, or of its license to do business in this state if it be a foreign company; and the general assembly shall provide additional and suitable penalties for the failure of any corporation to comply promptly with the requirements of this section, or of any laws passed in pursuance thereof. The commission shall compel all corporations to comply promptly with such requirements, by enforcing in the manner hereinbefore authorized, such fines and penalties against the delinquent company as may be provided for, or authorized by, this article; but the general assembly may relieve from the payment of the said registration fee any purely charitable institution or institutions.



**Sec. 163.** No foreign corporation shall be authorized to carry on, in this state, the business, or to exercise any of the powers or functions, of a public service corporation, or be permitted to do anything which domestic corporations are prohibited from doing, or be relieved from compliance with any of the requirements made of similar domestic corporations by the constitution and laws of this state, where the same can be made applicable to such foreign corporation without discriminating against it. But this section shall not affect any public service corporation whose line or route extends across the boundary of this commonwealth, nor prevent any foreign corporation from continuing in such lawful business as it may be actually engaged in within this state, when this constitution goes into effect; but any such foreign public service corporation, so engaged, shall not, without first becoming incorporated under the laws of this state, be authorized to acquire, lease, use, or operate, within this state, any public or municipal franchise or franchises in addition to such as it may own, lease, use or operate when this constitution goes into effect. The property, within this state, of foreign corporations shall always be subject to attachment, the same as that of non-resident individuals; and nothing in this section shall restrict the power of the general assembly to discriminate against foreign corporations whenever, and in whatsoever respect, it may deem wise or expedient.

### Statutes.

#### Pollard's Code, 1904, sec. 1105e.

**Sec. 39. Annual reports to the commission; penalty.** [As amended, Acts 1906, p. 13.] Every domestic corporation and every foreign corporation doing business within this state shall file in the office of the state corporation commission, after the first election of officers and directors, and annually thereafter, within thirty days after the time appointed for holding the annual election of directors, a report authenticated by the signature of the president, or one of the vice-presidents, or of the secretary of the corporation stating: a) The name of the corporation; b) The location (county or city, or street and number, if any there be) of its principal office in the state, and the name of the agent upon whom process against the corporation may be served; c) The character of its business; d) The amount of its authorized capital stock, if any, and the amount actually issued and outstanding; e) The names and addresses of the officers and directors of the corporation, and when their respective terms of office expire; f) The date, if any, appointed for the next annual meeting of the stockholders. If such report is not made and so filed, the corporation shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars, to be imposed and judgment entered therefor by the state corporation commission and enforced by its process.

**Laws, 1910, c. 283. An Act to amend and re-enact Sections 1104 and 1105 of the Code of Virginia, so as to require Foreign Corporations to procure Certificates of Authority from the State Corporation Commission for the Privilege of transacting Business in this State, and to prescribe Penalties against such Corporations for Failure to do so, and to provide for the Enforcement of such Penalties, as amended by an Act approved (May 15, 1903).**

**Sec. 1104.** Every incorporated company doing business in this state shall have an office in the state, at which all claims against the company due residents of the state may be audited, settled, and paid. Every such company incorporated under a jurisdiction beyond the limits of this state (and hereinafter designated as a foreign corporation) shall, before doing business in this state, present to the state corporation commission: a) a written power of attorney executed in duplicate, appointing some person residing in this state its agent, upon whom all legal process against the corporation may be served, and who shall be authorized to enter

an appearance in its behalf; b) two duly authenticated copies of the charter of the corporation; and c) a certificate of the auditor of public accounts, showing the payment into the treasury of the fee required by law to be paid by such corporation, and shall obtain from said corporation commission a certificate of authority to transact business in the state. If it shall be made to appear to the state corporation commission that said corporation has complied with the law relative to the obtaining of a certificate of authority for foreign corporations of the character of the applicant corporation, then said corporation commission shall issue to said corporation a certificate of authority to transact business in the state. Said commission shall file and preserve in their office one copy each of the power of attorney, charter, certificate of the auditor, and a certificate of the commission granting such certificate of authority, and forward copies of said documents to the secretary of the commonwealth, who shall file and preserve the same in his office. Whenever by reason of his removal from the state or from any other cause the powers of such resident agent shall be terminated, then such foreign corporation shall, by like written power of attorney, executed in duplicate and filed with the corporation commission as above provided, appoint another resident agent, one copy of such power of attorney shall be filed and preserved in the office of the corporation commission, and the other copy thereof transmitted to the secretary of the commonwealth to be filed in his office. If the charter of any foreign corporation thus authorized to transact business in this state is amended, two duly authenticated copies of such amendment shall be presented to the corporation commission and filed as copies of the original charter are required to be filed and the fee required by law on such amendment shall be paid in the manner prescribed by law. Any foreign corporation which has heretofore paid the fee required by law to entitle it to transact business in this state, and has otherwise complied with the law heretofore existing relative thereto, shall not, on application for certificate of authority to transact business in this state, be required to pay such fee again, nor to file a copy of the charter with the secretary of the commonwealth, if a copy thereof is already on file in his office. Such corporation shall pay the clerical fees for such certificate of authority and for filing such papers as prescribed by law.

**Sec. 1105.** If any foreign corporation shall transact business in this state without first obtaining such certificate of authority provided for in the preceding section, it shall be fined not less than ten dollars nor more than one thousand dollars, such fine to be imposed by the state corporation commission, whose duty it shall be to see that provisions of the preceding section are complied with. Every transaction had in the state by such a corporation without such certificate of authority shall be deemed a separate offense. The officers, agents, and employees of any such corporation doing business in this state without such certificate of authority shall be personally liable to the state for any fines imposed on it, and to any resident of the state having a claim against such corporation, and service of legal process upon any of said officers, agents, or employees shall be deemed sufficient service on the corporation. No such foreign corporation shall recover any money or property or enforce any contract in any court without first obtaining the certificate of authority to do business in this state provided for in the preceding section, nor until all taxes, fees and charges due to the state have been fully paid; provided, that nothing contained in this act shall prevent any corporation, after having withdrawn from the state, from enforcing a contract legally made while said company was acting under a certificate of authority from the state corporation commission as provided in this act. When any such corporation shall desire to cease doing business in this state it may do so by surrendering to the state corporation commission such original certificate of authority, or, if it be lost or destroyed, by filing an affidavit to that effect with the state corporation commission in lieu of such original certificate of authority, and by paying all taxes, fees, and charges then due to the state. Such certificate of authority shall not be construed to authorize any such foreign corporation to exercise any of the powers or functions of a public service corporation in this state, nor to exempt such foreign corporation from the payment of any state or local revenue license.

**Washington.****Rem. & Bal. Code, 1910.**

**Sec. 3720. Power of, to do business in this state.** Any corporation incorporated under the laws of any state or territory in the United States, or of any foreign country, state, or colony, for any of the purposes for which domestic corporations are authorized to be formed under the laws of this state, shall have full power and is hereby authorized to sue and to be sued in any court having competent jurisdiction, to acquire, purchase, hold, mortgage, sell, convey, or otherwise dispose of, in the corporate name, all real estate or personal property necessary or convenient to carry into effect the objects and purposes of its corporation, and also any interest in real estate, by mortgage or otherwise due to or loans made by such foreign corporations within the boundaries of this state, either prior to or after the passage of this act, and generally do and perform every act and transact every kind of business within this state in the same manner and to the same extent as corporations incorporated and organized under the laws of this state are authorized to do under the laws of this state, by a compliance with all the conditions prescribed by the next two succeeding sections of this chapter: Provided, however, that this chapter shall not be (so) construed as to allow such foreign corporation to transact business within the state on more favorable conditions than are prescribed by law for a similar corporation organized under the laws of this state: And provided further, that no corporation, the majority of the capital stock of which is owned by aliens, other than those who in good faith have declared their intention to become citizens of the United States, shall acquire the ownership of any lands in this state other than lands containing valuable deposits of minerals, metals, iron, coal, or fireclay, and the necessary land for mills and machinery to be used in the development thereof, and the manufacture of the products therefrom, except where acquired under mortgage, or in good faith in the ordinary course of justice in the collection of debts: Provided, further, that no foreign corporation which is hereafter organized which has among its other powers the business of dealing in real estate, and buying and selling the same, and for the purpose of carrying on a real estate brokerage business, shall be permitted to transact such business of buying and selling and dealing in real estate, and carrying on a brokerage business therein in this state; but this prohibition shall not extend to any other business for the transaction of which such corporation may be organized.

**Sec. 3721. Certified copy of charter, etc., to be filed and recorded.** Such corporation shall cause to be filed and recorded in the office of the secretary of state a certified copy of its charter, articles of incorporation, memorandum of association, or certificate of incorporation, certified to by the officer who is the custodian of the same according to the laws of the state or territory, country, or colony, where such corporation is incorporated, or who is authorized to issue certificates of incorporation according to the laws of such state, territory, or foreign country or colony. The instruments herein required to be filed and recorded shall be attested by such certifying officer under his hand and seal of office, which attestation shall be prima facie proof of the facts therein stated, and of the genuineness of the certificate. If such officer has no official seal, his certificate shall state that fact over his signature, and thereupon the secretary of state, or of the territory, in case of corporations within the United States, and the consul general, consul, vice-consul, deputy consul, consular agent, or commercial agent of the United States, at or nearest to the place where such certificate is made, in the case of corporations not within the United States, shall certify under his hand and seal of office to the genuineness of the signature of the officer making the certificate, and to the fact that at the time of making such certificate the person making the same held the office described in the certificate.

**Sec. 3722. Appointment of agent to be filed and recorded.** Such corporation shall also constitute and appoint an agent, who shall reside at the place in the state where the principal business of the corporation is to be carried on, to be designated as hereinafter required. Such appointment shall be in writing, signed by the president or chief officer of such corporation, and shall be attested by its corporate seal, and shall contain the name of the agent, his place of residence, and the place where

the principal business of such corporation is to be carried on, and shall authorize such agent to accept service of process in any action or suit pertaining to the property, business, or transactions of such corporation within this state in which such corporation may be a party. The signature of such president or chief officer, attested by the corporate seal of such written appointment shall be sufficient proof of the appointment of such agent. Such appointment, when duly executed, shall be filed for record in the office of the secretary of state by such corporation, and shall be there recorded; and such corporation shall have and keep continually some resident agent; empowered as aforesaid during all the time such corporation shall conduct or carry on any business within this state, and service of any process, pleading, notice or other paper shall be taken and held as due service on such corporation. Such corporation may change its agent or its principal place of business, from time to time, by filing and recording with the secretary of state a new appointment, stating the change of such agent or the change in the principal place of business; and in the event such foreign corporation shall withdraw from this state and cease to transact business therein it shall continue to keep and maintain such agent within this state upon whom service of process, pleadings, and papers may be made, until the statute of limitations shall have run against anyone bringing an action against said corporation, which accrued prior to its withdrawal from this state. In case said corporation shall revoke the authority of its designated agent after its withdrawal from this state and prior to the time when statutes of limitations would have run against causes of action accruing against it, then in that event service of process, pleadings, and papers in such actions may be made upon the secretary of state of the state of Washington, and the same shall be held as due and sufficient service upon such corporation.

**Sec. 3723. Penalty for failure to file copy of charter and appointment of agent.** Any foreign corporation doing business in this state which shall fail to comply with the provisions of the two preceding sections shall be subject to a penalty of two hundred and fifty dollars to be recovered in a civil action to be instituted by the attorney general in the name of the state of Washington, upon his being furnished with a sworn statement of facts sufficient to justify such action.

**Sec. 3724. Disposition of penalties.** All penalties so recovered shall be paid into the general fund of the state treasury.

**Sec. 3725. Not to file or record certified copies, when.** No corporation which has heretofore complied with the laws of the state or territory of Washington hitherto existing, regarding foreign corporations, and has kept a duly appointed agent within the boundaries of the state as heretofore required, shall be required to file for record, or cause to be recorded, the certified copies required by this act, or to execute or file for record, or cause to be recorded, a new appointment of agent as herein required.

**Sec. 3726. Assessor to ascertain names of corporations, agents, etc.** It shall be the duty of each and every county assessor in this state to ascertain each and every year, at the time of the tax assessment of his county, the name of every foreign corporation doing business by agent or otherwise within his county, the nature of such business, and the name of the agent of each of such corporations, if any there be, together with such agent's place of address, and shall, within ten days from and after the compilation of such assessment, make out and deliver to the county auditor of his county a full and complete list of the names of such corporations doing business in his county, together with the nature of the business so carried on by each of such corporations, and the name of the resident agent of each of such corporations, if any there be, and the place of residence of each of such agents.

**Sec. 3727. County auditors to report names of corporations, agents, etc.** It shall be the duty of each and every county auditor in this state to make out and transmit to the secretary of state, within thirty days after the receipt by him from such county assessor of the lists provided in the last preceding section, a full, true, and concise statement of the names of such corporations, their place of business, the nature of business conducted by such corporations, and the name of each and every agent of each of such corporations, if any there be and the places of residence of such agents.

**Sec. 3728. Fees allowed for recording.** The fees for recording, under the provisions of this chapter, shall be the same as are allowed by law to the secretary of state for certified copies of papers on file in his office.

**Sec. 3729. Agent is guilty of misdemeanor, when; how punished.** Any agent of any foreign corporation, conducting or carrying on business within the limits of this state, for and in the name of such corporation, contrary to any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in the county jail for a term not exceeding three months, or by both such fine and imprisonment.

**Sec. 3730. Assessor is guilty of misdemeanor, when; how punished.** Any county assessor failing to make out and deliver to the county auditor of his county a list, within the time and in the manner provided in section 3726, and any county auditor failing to make out and transmit to the secretary of state a statement, within the time and in the manner provided in section 3727, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding three hundred dollars.

---

## Wyoming.

### Comp. St. 1910.

---

**Sec. 4001. Acceptance of constitution.** No corporation organized under the laws of Wyoming territory, or any other jurisdiction than the state of Wyoming, shall be permitted to transact business in this state until it shall have accepted the constitution of this state. Such acceptance shall be executed and acknowledged in all respects in the manner provided by the laws of Wyoming and the by-laws of the corporation accepting the constitution, for the execution of deeds, and when duly executed shall be filed and recorded in the office of the secretary of state, and it shall be the duty of the secretary of state, upon the filing of any acceptance of the constitution duly executed, to note on the margin of the record of the certificate of incorporation of the corporation filing the same the fact that such acceptance is filed, which notation shall also refer to the book and page wherein appears the record of such acceptance. Provided, however, that every acceptance of the constitution of this state by any corporation, railroad, or other company, executed and filed in the office of the secretary of state prior to the ninth day of January, 1891, which is signed by one or more of the principal officers of such corporation, and has the corporate seal of such corporation affixed thereto, is hereby legalized and shall have the same force and effect in all respects as if the same had been executed and filed in conformity with the requirements of this section.

**Sec. 4249. File certificate or charter.** Every incorporated company incorporated under the laws of any foreign state or kingdom, or of any state or territory of the United States beyond the limits of this state (excepting insurance companies), and now or hereafter doing business within this state, shall within thirty days after commencing so to do business, file in the office of the secretary of state, and also file in the office of the register of deeds of the particular county within which it maintains its principal office and place of business, a copy of its charter of incorporation; or in case such company is incorporated by a certificate under any general incorporation law, it shall file in the office of the secretary of state and in the office of the register of deeds of the particular county within which it maintains its principal office and place of business, a copy of such certificate and of such general incorporation law, duly certified and authenticated by the proper authority of such foreign state, kingdom, or territory.

**Sec. 4250. Shall file certificate.** Any corporation engaged in carrying on any kind of manufacturing, mining, chemical, merchandising, or mechanical business, constructing or operating railroads, telegraph lines, or other business for the purpose of profit in this state, shall, within one year from the time of commencing such business, file its certificate of incorporation with the secretary of state, and the respective county clerks in the manner now provided by the laws of this state.

**Sec. 4251. Penalty for failure.** Any corporation, or any officer or agent thereof, or any person acting for it, attempting to do business in this state for any corporation of the character described in section 4250 which has failed to comply with the requirements of this chapter with reference to the filing of its certificates of incorporation shall be deemed guilty of a misdemeanor and upon conviction

thereof shall be fined in a sum not exceeding one thousand dollars or be imprisoned in the county jail for not more than six months.

**Sec. 4252. Same.** A failure to comply with the provisions of this chapter accompanied by an attempt on the part of any corporation, its agents or employees to carry on or transact any business in this state without such compliance, shall render each and every officer, agent, and stockholder of any such corporation jointly and severally, personally liable on any and all contracts of such company, made or performed within this state; and every corporation failing to comply with the provisions of this chapter and attempting to carry on or transact any business shall, by reason of such failure and such attempt to transact business, forfeit its right to do business in this state, and shall only have such right restored to it upon complying with the provisions of this chapter and the payment to the secretary of state, the sum of five dollars per day for each and every day it shall have so failed, from and after the first day of July, A. D. 1901.

This section does not apply to non-profit corporations, nor to insurance companies. — *Ibid.* sec. 4253.

**Sec. 4254. Duties and fees of register. Evidence.** The several certificates, statutes, and charters mentioned in section 4249 shall be by the register of deeds filed and preserved in his office as a part of the records thereof; and he shall be entitled to receive a fee of one dollar for receiving and filing every such certificate and statute. Copies of such charters, statutes, and certificates, duly certified by such register of deeds, under his seal of office, shall be received in all courts of this state as sufficient evidence of the existence and corporate character of such incorporations, and of all their powers, duties, and liabilities, and the originals thereof may in like manner be used in evidence of these matters with like effect.

**Sec. 4255. Notice of dissolution.** Whenever any foreign corporation, which is doing business according to law in this state, shall expire by limitation or otherwise, it shall be the duty of the agent or representative of such corporation to file and publish notices of such expiration in the same manner as is provided in section 4242.

The notice of dissolution must be signed by the president and secretary. One copy thereof shall be filed in the office of the secretary of state and one copy in the office of the county clerk in every county in which the articles of incorporation were filed, and a copy shall be published in some newspaper printed in each of said counties for the period of at least six weeks. *Sec. 4242.*

## Statutes on Monopolies and Combinations in Restraint of Trade.

### Federal Statutes.

#### C. 647. An Act to protect Trade and Commerce against Unlawful Restraints and Monopolies (26 Stat. L. 209).

**Sec. 1. Trusts, etc., in restraint of trade, etc., illegal; persons combining guilty of misdemeanor, penalty.** Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

**Sec. 2. Persons monopolizing, etc., trade, guilty of misdemeanor, penalty.** Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

**Sec. 3. Trusts, etc., in territories or District of Columbia illegal; persons combining guilty of misdemeanor; penalty.** Every contract, combination in form of trust, or otherwise, or conspiracy, in restraint of trade or commerce in any territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such territory and another, or between any such territory or territories and any state or states, or the District of Columbia, or with foreign nations, or between the District of Columbia and any state or states or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

**Sec. 4. Jurisdiction of courts; duty of district attorneys; procedure; hearing.** The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the attorney-general, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

**Sec. 5. Bringing in additional parties.** Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

**Sec. 6. Forfeiture, etc., of property of trusts, etc., in transit.** Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one state to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

**Sec. 7. Suits by persons; amount of recovery.** Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden, or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

**Sec. 8. Definition of "person."** That the word "person" or "persons" wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country.

Approved, July 2, 1890.

## C. 349. An Act to reduce Taxation, to provide Revenue for the Government, and for other Purposes (28 Stat. L. 570).

**Sec. 73. Trusts, etc., in restraint of import trade illegal, etc.; persons combining guilty of misdemeanor; penalty.** That every combination, conspiracy, trust, agreement, or contract is hereby declared to be contrary to public policy, illegal, and void, when the same is made by or between two or more persons or corporations either of whom is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the

United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and, on conviction thereof in any court of the United States, such person shall be fined in a sum not less than one hundred dollars and not exceeding five thousand dollars, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

**Sec. 74. Jurisdiction of courts; duty of district attorneys; procedure; hearing.** That the several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of section seventy-three of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the attorney-general, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

**Sec. 75. Bringing in additional parties.** That whenever it shall appear to the court before which any proceeding under the seventy-fourth section of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

**Sec. 76. Forfeiture, etc., of property of trusts, etc., in transit.** That any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section seventy-three of this act, and being in the course of transportation from one state to another, or to or from a territory, or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

**Sec. 77. Suits by persons injured; amount of recovery.** That any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Approved, August 27, 1894.

**C. 544.** An Act to expedite the Hearing and Determination of Suits in Equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled "An Act to protect Trade and Commerce against unlawful Restraints and Monopolies," "An Act to regulate Commerce", Approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like Purpose that may be hereafter enacted (32 Stat. L. 823.)

**Sec. 1. Precedence of hearing of suits arising under Act Feb. 4, 1887, c. 104, and Act July 2, 1890, c. 647; certificate by attorney-general; composition of court; review by Supreme Court.** That in any suit in equity pending or hereafter brought in any circuit court of the United States under the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, "An act to regulate commerce", approved



February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the attorney-general may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select. In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the supreme court for review in like manner as if taken there by appeal as hereinafter provided.

**Sec. 2. Appeals to supreme court.** That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said acts wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the supreme court and must be taken within sixty days from the entry thereof: Provided, that in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the supreme court in the manner now provided by law.

Approved, February 11, 1903.

**C. 428. An Act to amend an Act entitled "An Act to expedite the Hearing and Determination of Suits in Equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled 'An Act to protect Trade and Commerce against unlawful Restraints and Monopolies,' 'An Act to regulate Commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like Purpose that may be hereafter enacted," approved February eleventh, nineteen hundred and three.**

**Sec. 1. United States courts. Expediting hearings of trust, etc., cases. Precedence given to antitrust and commerce cases in circuit courts.** That section one of the act entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted," approved February eleventh, nineteen hundred and three, be, and the same is hereby, amended so as to read as follows:

"That in any suit in equity pending or hereafter brought in any circuit court of the United States under the act entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved July second, eighteen hundred and ninety, 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the attorney-general may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said court, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select; or, in case the full court shall not at any time be made up by reason of the necessary absence or disqualification of one or more of the said circuit judges, the justice of the supreme court assigned to that circuit or the other circuit judge or judges may designate a district judge or judges within the circuit who shall be competent to sit in said court at the hearing of said suit. In the event the judges

sitting in such case shall be equally divided in opinion as to the decision or disposition of said cause, or in the event that a majority of said judges shall be unable to agree upon the judgment, order, or decree finally disposing of said case in said court which should be entered in said cause, then they shall immediately certify shat faet to the chief justice of the United States, who shall at once designate and appoint some circuit judge to sit with said judges and to assist in determining said cause. Such order of the chief justice shall be immediately transmitted to the clerk of the circuit court in which said cause is pending, and shall be entered upon the minutes of said court. Thereupon said cause shall at once be set down for reargument and the parties thereto notified in writing by the clerk of said court of the action of the court and the date fixed for the reargument thereof. The provisions of this section shall apply to all causes and proceedings in all courts now pending, or which may hereafter be brought.

Approved, June 25, 1910.

## State Acts.

### California.

#### Acts, 1893, p. 30. An Act to prevent Combinations to obstruct the Sale of Live Stock in the State of California.

**Sec. 1. Combinations to prevent buying live stock prohibited.** It shall be unlawful for any two or more persons or corporations to combine or agree together to do any act which will, in any respect, prevent any person from buying live stock at any place in this state from any person having the same for sale, either for himself or as the representative or agent of the owner of the same.

**Sec. 2. Corporations prohibited.** It shall be unlawful for any corporation organized under the laws of this state, or any board of directors or trustees, or stockholders, or agents, or officers of any corporation, to have, pass, or enforce any rule, by-law, or regulation whereby any officer, stockholder, member, shareholder, agent, servant thereof, or any other person in any way interested in or connected with such corporation, shall in any respect be prohibited, prevented, or enjoined from buying live stock from any other person having such live stock for sale, either as owner thereof, or as the agent, representative, or assistant of such owner, in any market in this state, where live stock is brought to be sold.

**Sec. 3. By-laws of corporations.** Every rule, regulation, or by-law of any corporation doing business in this state, which has for its purpose, or which, directly or indirectly, tends to prevent its members or stockholders from freely purchasing live stock from any person lawfully having the same for sale, upon any live stock market of this state, are hereby declared to be contrary to the public policy of this state, and unlawful and void; and any person or persons who shall attempt, directly or indirectly, to enforce any such rule, regulation, or by-law, shall be deemed guilty of a misdemeanor, and in addition to the penalties prescribed by this act shall be personally liable for all damages which may arise from the enforcement of such rule, regulation, or by-law, to any person damaged thereby.

**Sec. 4. Trusts, combinations, or conspiracies.** No trusts, combinations, or conspiracies shall be organized or exist in this state, to prevent any person or persons, or corporation, from selling live stock on commission, for such an amount of commission as any person engaged in the business may see fit to charge; and all rules, regulations, by-laws, or agreements of any corporation, association, society, or combination of persons, whereby any such corporation, society, association, or combination of individuals are required to charge not less than a given sum for commissions, or whereby any person or commission merchant is, in any respect, restrained from charging less than a certain fixed sum for his services as such commission merchant in the sale of live stock, are hereby declared to be contrary to the public policy of this state, and unlawful; and any person who shall enter into any such trust, combination, or conspiracy, or who shall enforce or aid, abet, assist, or encourage the enforcement of any such rule, regulation, by-law, or agreement, shall be liable to the penalties prescribed by this act, and also shall be personally

liable to any person, individual, society, or corporation who may be injured in his property or business thereby, to the full extent of the injury resulting therefrom.

**Sec. 5. Selling live stock at any market.** Whoever shall, directly or indirectly, be a party to any combination, conspiracy, or association, which attempts, directly or indirectly, to prevent any other person from freely selling live stock at any market in this state for such persons as see fit to engage his services, or shall endeavor to compel, directly or indirectly, any person to charge not less than a fixed minimum sum for services in the sale of live stock, or shall, in any way, hinder or prevent another from lawfully selling live stock for another, for such rate of commission as may be agreed upon by the owner of the live stock and the commission merchant, shall be deemed guilty of a misdemeanor, and suffer the penalties prescribed by this act, and shall be personally liable to any one aggrieved thereby, for the full amount of any damage sustained by such person.

**Sec. 6. Punishment.** Any one who shall violate the provisions of this act shall be punished by a fine in any sum not less than five hundred dollars, and not more than five thousand dollars, or by imprisonment in the county jail not exceeding one year, or by either or both, in the discretion of the court, and shall be liable, in civil action, to any person aggrieved, in such damages as he or she may have sustained by the violation of this act.

**Sec. 7. Time act shall take effect.** This act shall take effect and be in force from after and its passage.

### **Acts, 1903, p. 289. An Act to limit the meaning of the Word "Conspiracy" and also the Use of Restraining Orders and Injunctions, as applied to Disputes between Employers and Employees in the State of California.**

**Sec. 1. Combinations in trade disputes not criminal, when.** No agreement, combination, or contract by or between two or more persons to do or procure to be done, or not to do or procure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employees in the state of California shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy, if such act committed by one person would not be punishable as a crime, nor shall such agreement, combination, or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto. Nothing in this act shall exempt from punishment, otherwise than as herein excepted, any persons guilty of conspiracy, for which punishment is now provided by any act of the legislature, but such act of the legislature shall, as to the agreements, combinations, and contracts hereinbefore referred to, be construed as if this act were therein contained; provided, that nothing in this act shall be construed to authorize force or violence, or threats thereof.

**Sec. 2. Time act shall take effect.** This act shall take effect immediately.

### **Acts, 1907, p. 984. An Act to define Trust and to provide for Criminal Penalties and Civil Damages, and Punishment of Corporations, Persons, Firms, and Associations, or Persons connected with them, and to promote free Competition in Commerce and all Classes of Business in this State.**

**Sec. 1. A trust defined. Trade restrictions. Limiting production. Preventing competition. Fixing prices. Agreements.** A trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them for either, any, or all of the following purposes: 1. To create or carry out restrictions in trade or commerce; 2. To limit or reduce the production, or increase the price of merchandise or of any commodity; 3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce, or any commodity; 4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce

intended for sale, barter, use, or consumption in this state; 5. To make or enter into or execute or carry out any contracts, obligations, or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or any commodity or any article of trade, use, merchandise, commerce, or consumption below a common standard figure, or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity, or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine, or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy, and void; provided that no agreement, combination, or association shall be deemed to be unlawful or within the provisions of this act, the object and business of which are to conduct its operations at a reasonable profit or to market at a reasonable profit those products which can not otherwise be so marketed; provided further, that it shall not be deemed to be unlawful, or within the provisions of this act, for persons, firms, or corporations, engaged in the business of selling or manufacturing commodities of a similar or like character, to employ, form, organize, or own any interest in any association, firm, or corporation, having as its object or purpose the transportation, marketing, or delivery of such commodities.

**Sec. 2. Violation of act. Proceedings authorized.** For a violation of any of the provisions of this act by any corporation or association mentioned herein, it shall be the duty of the attorney general or the district attorney of the proper county, to institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter rights, franchises, or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the state.

**Sec. 2½. Agreements permitted.** It shall be lawful to enter into agreements or form associations or combinations, the purpose and effect of which shall be to promote, encourage, or increase competition in any trade or industry, or which are in furtherance of trade.

**Sec. 3. Foreign corporations amenable. Duty of attorney general and secretary of state.** Every foreign corporation, as well as every foreign association, exercising any of the powers, franchises, or functions of a corporation in this state, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business in this state, and it shall be the duty of the attorney general to enforce this provision by bringing proper proceedings by injunction or otherwise. The secretary of state shall be authorized to revoke the license of any such corporation or association heretofore authorized by him to do business in this state.

**Sec. 4. Penalty for persons concerned in violation of this act.** Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall as principal, manager, director, agent, servant, or employee, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or furnish any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty (\$ 50) dollars nor more than five thousand (\$ 5,000) dollars, or be imprisoned not less than six months nor more than one year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

**Sec. 5. What indictment must set out.** In any indictment, information, or complaint for any offense named in this act, it is sufficient to state the purpose or effects of the trust or combination, and that the accused is a member of, acted with or in pursuance of it, or aided or assisted in carrying out its purposes, without giving its name or description, or how, when, and where it was created.

**Sec. 6. Prosecutions, what to prove. Books and papers must be produced when ordered.** In prosecutions under this act, it shall be sufficient to prove that a trust or combination, as defined herein, exists, and that the defendant belonged to it,

or acted for or in connection with it, without proving all the members belonged to it, or proving or producing any article of agreement, or any written instrument on which it may have been based; or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such. In case any court of record, or in vacation any judge of said court in which is pending any civil, criminal, or other action or proceeding brought or prosecuted by the attorney general or any district attorney for the violation of any of the provisions of this act or in any action or proceeding for the violation of the law of this state, against conspiracy or combination in restraint of trade so orders, no person so ordered shall be excused from attending, testifying, or producing books, papers, schedules, contracts, agreements, or any other document in obedience to the subpoena or under the order of such court or any commissioner or referee appointed by said court to take testimony or any notary public or other person or officer authorized by the laws of this state to take depositions when the order made by such court or judge thereof includes a witness whose deposition is being taken before such notary public or other officer on the ground or for the reason that the testimony or evidence required of him may tend to criminate him or subject him to any penalty; but no individual shall be prosecuted or subjected to any penalty for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, before any such court, person, or officer.

**Sec. 7. Penalty, after notice by attorney general.** Each and every firm, person, partnership, corporation, or association of persons, who shall in any manner violate any of the provisions of this act, shall for each and every day that such violations shall be committed or continued, after due notice given by the attorney general or any district attorney, forfeit and pay the sum of fifty (\$ 50) dollars, which may be recovered in the name of the people of the state of California, in any county where the offense is committed, or where either of the offenders resides; and it shall be the duty of the attorney general, or the district attorney of any county on the order of the attorney general, to prosecute for the recovery of the same. When the action is prosecuted by the attorney general against a corporation or association of persons, he may begin the action in the supreme [superior] court of the county in which defendant resides or does business.

**Sec. 8. Contracts in violation of act void.** That any contract or agreement in violation of the provisions of this act, shall be absolutely void and shall not be enforceable either in law or equity.

**Sec. 9. Provisions cumulative.** That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state.

**Sec. 10. Trust certificates not lawful.** It shall not be lawful for any person, partnership, association, or corporation, or any agent thereof, to issue or to own trust certificates, or for any person, partnership, association, or corporation, agent, officer, or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation, or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract, or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use, or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article, and any person, partnership, association, or corporation that shall enter into any such combination, contract, or agreement for the purpose aforesaid shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars, nor more than five thousand dollars.

**Sec. 11. Persons injured in business by trust may bring suit.** In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover twofold the damages by him sustained, and the costs of suit. Whenever it shall

appear to the court before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned whether they reside in the county where such action is pending, or not.

**Sec. 12. "Person" defined.** The word "person" or "persons" whenever used in this act, shall be deemed to include corporations, partnerships, and associations existing under or authorized by the laws of this state or any other state, or any foreign country.

**Sec. 13. Labor not a commodity.** Labor whether skilled or unskilled is not a commodity within the meaning of this act.

## Illinois.

**Laws, 1891, p. 206. An Act to provide for the Punishment of Persons, Copartnerships, or Corporations forming Pools, Trusts, and Combines, and Mode of Procedure, and Rules of Evidence in such Cases (June 11, 1891).**

**Sec. 1. Trusts, pools, and combines legally defined.** If any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this state, or any partnership or individual or other association of persons whosoever, shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation, or understanding with any other corporation, partnership, individual, or any other person or association of persons, to regulate or fix the price of any article of merchandise or commodity, or shall enter into, become a member of or party to any pool, agreement, contract, combination, or confederation to fix or limit the amount or quantity of any article, commodity, or merchandise to be manufactured, mined, produced, or sold in this state, such corporation, partnership, or individual, or other association of persons shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to indictment and punishment as provided in this act<sup>1</sup>).

**Sec. 2. Issue of trust certificates and organization of combinations prohibited.** It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer, or employé, or the directors or stockholders of any corporation to enter into any combination, contract, or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract, or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use, or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article.

**Sec. 3. Penalties for violation of this act by persons or corporations.** If a corporation or a company, firm, or association, shall be found guilty of a violation of this act, it shall be punished by a fine in any sum not less than five hundred dollars nor more than two thousand dollars for the first offense; and for the second offense not less than two thousand dollars nor more than five thousand dollars; and for the third offense not less than five thousand dollars nor more than ten thousand dollars, and for every subsequent offense and conviction thereof, shall be liable to a fine of fifteen thousand dollars: Provided, that in all cases under this act either party shall have the right of trial by jury.

**Sec. 4. Penalties for violation of this act by officers or agents.** Any president, manager, director, or other officer or agent or receiver of any corporation, company, firm, or association, or any member of any company, firm, or association, or any

<sup>1</sup>) An amendment to this section by Laws, 1897, p. 298, adding the following proviso: "Provided, however, that in the mining, manufacture, or production of articles of merchandise, the cost of which is mainly made up of wages, it shall not be unlawful for persons, firms, or corporations doing business in this state to enter into joint arrange-

ments of any sort, the principal object or effect of which is to maintain or increase wages," was declared unconstitutional in *People v. Butler Street Foundry*, 201 Ill. 236, and is therefore not incorporated here. The remainder of the act, including the amendments of 1897, was held constitutional in the same case.

individual found guilty of a violation of the first section of this act, may be punished by a fine of not less than two hundred dollars, nor to exceed one thousand dollars, or be punished by confinement in the county jail not to exceed one year, or both, in the discretion of the court before which such conviction may be had.

**Sec. 5. Declares contracts and agreements in violation of this act void.** Any contract or agreement in violation of any provision of the preceding sections of this act, shall be absolutely void.

**Sec. 6. Exempts purchasers of commodities, produced or manufactured in violation of this act, from payment.** Any purchaser of any article or commodity from any individual, company, or corporation transacting business contrary to any provision of the preceding sections of this act, shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment.

**Sec. 7. Fines, how recovered.** The fines hereinbefore provided for may be recovered in an action of debt, in the name of the people of the state of Illinois. If, upon the trial of any cause instituted under this act to recover the penalties as provided for in section three, the jury shall find for the people, and that the defendant has been before convicted of a violation of the provisions of this act, they shall return such finding with their verdict, stating the number of times they find defendant so convicted, and shall assess and return with their verdict the amount of the fine to be imposed upon the defendant in accordance with said section three: Provided, that in all cases under the provisions of this act, a preponderance of evidence in favor of the people shall be sufficient to authorize a verdict and judgment for the people.

**Sec. 7a. Secretary of state to address letter of inquiry; form of affidavit; attorney-general to take legal action to recover penalty or revoke charter.** It shall be the duty of the secretary of state, on or about the first day of September of each year, to address to the president, secretary, or treasurer of each incorporated company doing business in this state, whose postoffice address is known or may be ascertained, a letter of inquiry as to whether the said corporation has all or any part of the business or interest in or with any trust, combination, or association of persons or stockholders, as named in the preceding provisions of this act, and to require an answer, under oath, of the president, secretary, or treasurer, or any director of said company. A form of affidavit shall be enclosed in said letter of inquiry, as follows:

*Affidavit.*

State of Illinois, }  
County of . . . . . } ss.

I, . . . . . do solemnly swear that I am the . . . . . (president, secretary, treasurer, or director) of the corporation known and styled . . . . . duly incorporated under the laws of . . . . . on the . . . . . day of . . . . . 18 . . . . and now transacting or conducting business in the state of Illinois, and that I am duly authorized to represent said corporation in the making of this affidavit: and I do further solemnly swear that the said . . . . . known and styled as aforesaid, has not, since the . . . . . day of . . . . . (naming the day upon which this act takes effect), created, entered into, or become a member of, or a party to, and was not, on the . . . . . day of . . . . . nor at any day since that date, and is not now, a member of or a party to, any pool, trust, agreement, combination, confederation, or understanding with any other corporation, partnership, individual, or any other person or association of persons to regulate or fix the price of any article of merchandise or commodity; and that it has not entered into or become a member of, or a party to, any pool, trust, agreement, contract, combination, or confederation to fix or limit the amount or quantity of any article, commodity, or merchandise to be manufactured, mined, produced, or sold in the state, and that it has not issued and does not own any trust certificates, and for any corporation, agent, officer, or employe or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract, or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof the purpose and effect of which said combination, contract, or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees: with the intent to limit or fix the price or lessen the production and sales of any article of commerce, use or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article.

.....  
(President, Secretary, Treasurer, or Director.)

Subscribed and sworn to before me, a . . . . . within and for the county of . . . . .  
this . . . . . day of . . . . . 18 . . . .  
(Seal.)

And on refusal to make oath to said inquiry, or on failure to do so within thirty days from the mailing thereof, the secretary of state shall certify that fact to the attorney general, whose duty it shall be to direct the state's attorney of the county wherein such corporation or corporations are located, and it is hereby made the duty of the state's attorney under the direction of the attorney-general, at the earliest practicable moment, in the name of the people of the state of Illinois, and at the relation of the attorney-general to proceed against such corporation for the recovery of a penalty of fifty dollars for each day after such refusal to make oath, or failure to make said oath within the thirty days from the mailing of said notice; or the attorney-general may, by any proper proceedings in a court of law or chancery, proceed, upon such failure or refusal to forfeit such charter of such incorporated company or association incorporated under the general laws, or by any special law of this state, and to revoke the rights of any foreign corporation located herein to do business in this state. Provided, however, that before any such suit or prosecution as contemplated by this act shall be instituted against any person, persons, copartnerships, or corporations failing to file such affidavit within said thirty days from the mailing of such notice from the secretary of state, as aforesaid, it shall be the duty of the state's attorney of the county where such person, copartnership, or corporation is located, to give such person, copartnership, or corporation ten days' notice in writing of the intention to institute such suit or proceeding: And provided further that if such person, copartnership, or corporation shall then within such period of ten days make and file such affidavit in the office of the secretary of state, no penalty shall attach, and no suit or proceeding shall be instituted against such person, copartnership, or corporation.

**Sec. 7b. Upon a failure to comply such corporation shall be proceeded against. Fee for receiving and filing affidavit. Building, loan, and homestead associations exempted.** It shall be the duty of the secretary of state, at any time, upon satisfactory evidence that any company or association of persons, duly incorporated under the laws of this or any other state, doing business in this state, has entered into any trust, combination, or association in violation of the preceding sections of this act, to demand that it shall make the affidavit, as above set forth in this act, as to the conduct of its business. In case of failure of compliance on the part of the corporation, then the same procedure shall ensue as is provided in section 7a of this act: Provided, that no corporation, firm, association, or individual shall be subject to any criminal prosecution by reason of anything truthfully disclosed by the affidavit required by this act, or truthfully disclosed in any testimony elicited in the execution thereof. The secretary of state is hereby authorized and required to charge and collect of each corporation a fee of one dollar for receiving and filing the affidavit herein provided for, to be accounted for as other fees received by him. To enable the secretary of state to discharge the additional duties devolving upon him in the execution of this act there is hereby appropriated out of any funds in the state treasury not otherwise appropriated, or so much thereof as may be necessary, the sum of six thousand dollars per annum, payable to the secretary of state on his order upon proper vouchers as required by law; Provided, that corporations organized under the building, loan, and homestead association laws of this state are excluded from the provisions of this act.

**Sec. 8. Prosecutions under this act. Duties of attorney-general and state's attorneys. Fines, how disposed of.** It shall be the duty of the prosecuting attorneys in their respective jurisdictions, and the attorney-general, to enforce the foregoing provisions of this act, and any prosecuting attorney of any county, securing a conviction under the provisions of this act, shall be entitled to such fee or salary as by law he is allowed for such prosecution. When there is a conviction under this act, the informer shall be entitled to one-fifth of the fine recovered, which shall be paid him when the same is collected. All fines recovered under the provisions of this act shall be paid into the county treasury of the county in which the suit is tried, by the person collecting the same, in the manner now provided by law, to be used for county purposes.



## New York.

### Cons. Laws, 1909, c. 25. An Act relating to General Business, constituting Chapter twenty of the Consolidated Laws.

**Sec. 340. Contracts for monopoly illegal and void.** Every contract, agreement, arrangement, or combination whereby a monopoly in the manufacture, production, or sale in this state of any article or commodity of common use is or may be created, established, or maintained, or whereby competition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or whereby for the purpose of creating, establishing, or maintaining a monopoly within this state of the manufacture, production, or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade, or occupation is or may be restricted or prevented, is hereby declared to be against public policy, illegal, and void.

**Sec. 341. Penalty.** Every person or corporation, or any officer or agent thereof, who shall make or attempt to make or enter into any such contract, agreement, arrangement, or combination, or who within this state shall do any act pursuant thereto, or in, toward, or for the consummation thereof, wherever the same may have been made, is guilty of a misdemeanor, and on conviction thereof shall, if a natural person, be punished by a fine not exceeding five thousand dollars, or by imprisonment for not longer than one year, or by both such fine and imprisonment; and if a corporation, by a fine of not exceeding twenty thousand dollars. An indictment based on a violation of any of the provisions of this section must be found within two years after its commission.

**Sec. 342. Action to restrain and prevent.** The attorney-general may bring an action in the name and in behalf of the people of the state against any person, trustee, director, manager, or other officer or agent of a corporation, or against a corporation, foreign or domestic, to restrain and prevent the doing in this state of any act herein declared to be illegal, or any act in, toward, or for the making or consummation of any contract, agreement, arrangement, or combination herein prohibited, wherever the same may have been made.

**Sec. 343. Procedure; application for order.** Whenever the attorney-general has determined to commence an action or proceeding under this article, he may present to any justice of the supreme court, before beginning such action or proceeding, an application in writing, for an order directing the persons mentioned in the application to appear before a justice of the supreme court, or a referee designated in such order, and answer such questions as may be put to them or to any of them, and produce such papers, documents, and books concerning any alleged illegal contract, arrangement, agreement, or combination in violation of this article; and it shall be the duty of the justice of the supreme court, to whom such application for the order is made, to grant such application. The application for such order made by the attorney-general may simply show upon his information and belief that the testimony of such person is material and necessary. The provisions of the code of civil procedure, chapter nine, title three, article one, relating to the application for an order for the examination of witnesses before the commencement of an action and the method of proceeding on such examinations, shall not apply, except as herein prescribed. The order shall be granted by the justice of the supreme court to whom the application has been made, with such preliminary injunction or stay as may appear to such justice to be proper and expedient, and shall specify the time when and place where the witnesses are required to appear, and such examination shall be held either in the city of Albany, or in the judicial district in which the witness resides, or in which the principal office within this state, of the corporation affected, is located. The justice or referee may adjourn such examination from time to time and witnesses must attend accordingly. The testimony of each witness must be subscribed by him, and all must be filed in the office of the clerk of the county in which such order for examination is filed.

**Sec. 344. Order for examination.** The order for such examination must be signed by the justice making it, and the service of a copy thereof, with an endorsement by the attorney-general, signed by him, to the effect that the person named therein is required to appear and be examined at the time and place, and before

the justice or referee specified in such indorsement, shall be sufficient notice for the attendance of witnesses. Such indorsement may contain a clause requiring such person to produce on such examination all books, papers, and documents in his possession, or under his control, relating to the subject of such examination. The order shall be served upon the person named in the indorsement aforesaid, by showing him the original order, and delivering to and leaving with him, at the same time, a copy thereof indorsed as above provided, and by paying or tendering to him the fee allowed by law to witnesses subpoenaed to attend trials of civil actions in a court of record in this state.

**Sec. 345. No person excused from answering.** No person shall be excused from attending and testifying, or from producing any books, papers, or other documents before any court, magistrate, or referee, upon any investigation, proceeding, or trial pursuant to or for a violation of any of the provisions of this article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture, for or on account of any transaction, matter, or thing concerning which he may so testify, or produce evidence, documentary or otherwise. And no testimony so given or produced shall be received against him upon any criminal investigation, proceeding, or trial.

**Sec. 346. Powers of referee.** A referee appointed as provided in this article possesses all the powers and is subject to all the duties of a referee appointed under section ten hundred and eighteen of the code of civil procedure, so far as practicable, and may punish for contempt a witness duly served as prescribed in this article for non-attendance or refusal to be sworn or to testify or to produce books, papers, and documents according to the direction of the indorsement aforesaid, in the same manner, and to the same extent as a referee appointed to hear, try, and determine an issue of fact or of law.

## Federal Corporation Tax Law.

### C. 6. An Act to provide Revenue, equalize Duties, and encourage the Industries of the United States, and for other Purposes (36 Stat. L.).

**Sec. 38. Income tax on corporations.** That every corporation, joint stock company or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any state or territory of the United States, or under the acts of congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any state or territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its territories, Alaska, and the District of Columbia during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies, or association, or insurance companies subject to the tax hereby imposed: Provided however, That nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual

benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources: (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, all interest actually paid by it within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any state or territory thereof, or imposed by the government of any foreign country as a condition to carrying on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: Provided, that in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its territories, Alaska, and the District of Columbia: (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its territories, Alaska, and the District of Columbia, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its territories, Alaska, or the District of Columbia not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any state or territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with state or territorial officers, pursuant to law, as additions to guaranty or reserve funds, shall be treated as being payments required by law to reserve funds.

Third. There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nine-

teen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice-president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company, has its principal place of business, or, in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form as the commissioner of internal revenue, with the approval of the secretary of the treasury, shall prescribe, setting forth: (first) the total amount of the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint stock company or association, or insurance company at the close of the year; (third) the gross amount of the income of such corporation, joint stock company or association, or insurance company, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its territories, Alaska, and the District of Columbia; also the amount received by such corporation, joint stock company or association, or insurance company, within the year by way of dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fourth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint stock company or association, or insurance company, within the year, stating separately all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States and its territories, Alaska, and the District of Columbia; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States or its territories, Alaska, and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve fund; (sixth) the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of its paid up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States or any state or territory thereof, and separately the amount so paid by it for taxes imposed by the government of any foreign country as a condition to carrying on business therein; (eighth) the net income of such corporation, joint stock company or association, or insurance company, after making the de-

ductions in this section authorized. All such returns shall as received be transmitted forthwith by the collector to the commissioner of internal revenue.

Fourth. Whenever evidence shall be produced before the commissioner of internal revenue which in the opinion of the commissioner justifies the belief that the return made by any corporation, joint stock company or association, or insurance company, is incorrect, or whenever any collector shall report to the commissioner of internal revenue that any corporation, joint stock company or association, or insurance company, has failed to make a return as required by law, the commissioner of internal revenue may require from the corporation, joint stock company or association, or insurance company, making such return, such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the commissioner of internal revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the commissioner of internal revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers. Upon the information so acquired the commissioner of internal revenue may amend any return or make a return where none has been made. All proceedings taken by the commissioner of internal revenue under the provisions of this section shall be subject to the approval of the secretary of the treasury.

Fifth. All returns shall be retained by the commissioner of internal revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty per centum of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed unless the refusal, neglect, or falsity is discovered after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint stock company or association, or insurance company, immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the commissioner of internal revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the commissioner of internal revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the commissioner of internal revenue and shall constitute public records and be open to inspection as such.

Seventh. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by

him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section except upon the special direction of the president; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.

Eighth. If any of the corporations, joint stock companies or associations, or insurance companies, aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company, shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars. Any person authorized by law to make, render, sign, or verify, any return who makes any false or fraudulent return, or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution. All laws relating to the collection, remission, and refund of internal revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books, as aforesaid, shall reside, to compel such attendance, production of books, and testimony by appropriate process.

---

## XIV.

### COMMERCIAL TREATIES AND CONSULAR LAWS

---

# Commercial Treaties and Consular Laws.

(By Joseph Richardson Baker, A. B., of the Solicitor's Office of the Department of State, Washington.)

## Analysis.

### I. COMMERCIAL TREATIES

- A. History of Commercial Treaties*
- B. List of Commercial Treaties in Force*
- C. Enforcement and Interpretation of Treaties*

### II. CONSULAR REGULATIONS

**I. COMMERCIAL TREATIES. — A. History of Commercial Treaties.** — The Constitution of the United States in the following language vests the treaty-making power in the President and Senate: "He (the President) shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur."<sup>1</sup>). The States are prohibited by the Constitution from entering into any treaty, alliance, or confederation, laying any duty on tonnage or entering into any agreement or compact with another state or with a foreign power<sup>2</sup>).

By Article VI of the Constitution it is provided that "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."<sup>3</sup>). However, an Act of Congress, if of later date than treaty provisions with which it is inconsistent, will supersede the latter<sup>4</sup>).

During the war for independence with Great Britain, the United States entered into treaties of alliance and of commerce with France.

Prior to the adoption of the Constitution and while acting under the Articles of Confederation between the States the United States Government made treaties with various foreign powers. Treaties of commerce were made with the Netherlands in 1782, with Sweden in 1783, and with Prussia in 1785. The policy of the Government in this respect was announced by Congress in a resolution of May 7, 1784, wherein it was set forth that it would be of advantage for the United States to enter into treaties with "Russia, the Court of Vienna, Prussia, Denmark, Saxony, Hamburg, Great Britain, Spain, Portugal, Genoa, Tuscany, Rome, Naples, Venice, Sardinia, and the Ottoman Porte." It seems that pursuant to this policy, negotiations were soon entered into with many European Powers but only consummated with Prussia.

These early treaties, notable as marking the taking of jurisdiction by the National Government of the foreign commerce of the States, which prior to that time had been commercially independent, contained the so-called "most favored nation" clause, whereby, generally speaking, it was agreed that no other or greater duties should be exacted in the ports of one of the contracting parties from citizens or subjects of the other contracting party, than from subjects of the most favored nation. They also provided extensively for the condition of commerce and navigation in case of war, laid down rules governing contraband, privateers, prizes, visits of war vessels, etc., and thus reflected the warlike spirit of the times, in this respect affording a striking contrast with later treaties, in which the contingency of war receive much less attention.

The Consular Convention with France of 1788 was the first treaty to be ratified under the Constitution. Then followed the famous Jay Treaty with Great Britain, concluded in 1794, the first one negotiated under the constitutional power, which contained important commercial provisions and which, by reason of the prevalent

<sup>1</sup>) Art. II, sec. 2. — <sup>2</sup>) Art. I, sec. 10. — <sup>4</sup>) *Whitney v. Robertson*, (1887) 124 U. S. 190.

<sup>3</sup>) *In re Tibucio Parrott*, (1880) 1 Fed., 481.



friendship in the United States for France and hostility to Great Britain, was not formally ratified until 1796, other treaties having been meanwhile ratified with Spain and Algiers, containing provisions relative to tariffs and tariff dues. The early treaties negotiated by the country seem to have been designed generally to give greater freedom of movement and trade, to abolish discriminations and to place the powers concerned on a footing with other favored nations.

**B. List of Commercial Treaties in Force<sup>1</sup>).** — The list of the commercial treaties of the United States now in force, with the dates of their conclusion and a brief statement of their articles, and notes referring to Federal Court decisions bearing thereon are set forth below.

### Argentine Republic.

Treaty of Friendship, Commerce, and Navigation, July 27, 1853.

#### Articles.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>I. Amity.</li> <li>II. Mutual freedom of commerce.</li> <li>III. Most favored nation clause.</li> <li>IV. No discriminating duties to be levied.</li> <li>V. Navigation dues to be equal.</li> <li>VI. Mutual privileges to vessels.</li> <li>VII. Nationality of vessels.</li> <li>VIII. Freedom to trade.</li> </ul> | <ul style="list-style-type: none"> <li>IX. Privileges of citizens; settling estates.</li> <li>X. Exemptions from military service and forced loans; taxes.</li> <li>XI. Diplomatic and consular agents.</li> <li>XII. Privileges in time of war.</li> <li>XIII. Mutual protection to citizens.</li> <li>XIV. Ratification.</li> </ul> |
|---|---|

### Austria-Hungary.

Treaty of Commerce and Navigation, August 27, 1829.

#### Articles.

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>I. Liberty of commerce and navigation.</li> <li>II. Shipping charges to be equal.</li> <li>III. No discrimination in import duties.</li> <li>IV. Application of two preceding articles.</li> <li>V. Most favored nation treatment of products.</li> <li>VI. Reciprocal right of vessels to export.</li> </ul> | <ul style="list-style-type: none"> <li>VII. Coastwise trade.</li> <li>VIII. No discriminations against vessels.</li> <li>IX. Most favored nation favors.</li> <li>X. Consular officers authorized.</li> <li>XI. Property of deceased persons.</li> <li>XII. Duration.</li> <li>XIII. Ratification.</li> </ul> |
|--|---|

### Belgium.

Treaty of Commerce and Navigation, March 8, 1875.

#### Articles.

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>I. Freedom of commerce and navigation.</li> <li>II. Duties payable by Belgian vessels.</li> <li>III. Duties payable by United States vessels.</li> <li>IV. Coasting trade.</li> <li>V. Import duties.</li> <li>VI. Export duties.</li> <li>VII. Premiums, drawbacks, etc.</li> <li>VIII. Fisheries excluded.</li> </ul> | <ul style="list-style-type: none"> <li>IX. Nationality of vessels.</li> <li>X. Cargoes for other countries.</li> <li>XI. Warehousing.</li> <li>XII. Most favored nation privileges.</li> <li>XIII. Shipwrecks.</li> <li>XIV. Transit duty.</li> <li>XV. Trademarks.</li> <li>XVI. Duration.</li> <li>XVII. Ratification.</li> </ul> |
|--|---|

### Bolivia.

Treaty of Peace, Friendship, Commerce, and Navigation, May 13, 1858.

#### Articles.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>I. Mutual amity.</li> <li>II. Most favored nation clause.</li> <li>III. Freedom of trade; coasting trade; travel.</li> <li>IV. Tonnage charges.</li> <li>V. Nationality of Bolivian ships.</li> <li>VI. Import and export duties.</li> <li>VII. Liberty to trade.</li> <li>VIII. Steam vessels in Bolivia.</li> <li>IX. Asylum of ports, etc.</li> </ul> | <ul style="list-style-type: none"> <li>X. Assistance to shipwrecks.</li> <li>XI. Captures by pirates.</li> <li>XII. Property of decedents.</li> <li>XIII. Protection to citizens.</li> <li>XIV. Religious freedom.</li> <li>XV. Freedom of navigation.</li> <li>XVI. Neutral rights; free ships, free goods.</li> <li>XVII. Contraband of war.</li> <li>XVIII. Commerce permitted in case of war.</li> <li>XIX. Delivery of contraband articles.</li> </ul> |
|---|---|

<sup>1</sup>) As in force April 1, 1911.

- XX. Blockade.
- XXI. Visitation and search.
- XXII. Proof of nationality in case of war.
- XXIII. Vessels under convoy.
- XXIV. Adjudication of prizes.
- XXV. Letters of marque forbidden.
- XXVI. Navigation of the Amazon and La Plata.
- XXVII. Tributaries of the Amazon and La Plata.
- XXVIII. Rights of citizens in case of war.

- XXIX. Confiscation forbidden.
- XXX. Privileges to diplomatic and consular officers.
- XXXI. Consular officers authorized.
- XXXII. Exequaturs.
- XXXIII. Consular exemptions.
- XXXIV. Deserters from ships.
- XXXV. Agreement for consular convention.
- XXXVI. Duration; effect, etc., of treaty; ratification.

### Borneo.

Convention of Amity, Commerce, and Navigation, June 23, 1850.

#### Articles.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>I. Amity.</li> <li>II. Liberty of commerce.</li> <li>III. Protection to United States citizens.</li> <li>IV. Freedom of imports and exports.</li> <li>V. Tonnage on American ships; exemptions.</li> </ul> | <ul style="list-style-type: none"> <li>VI. No export duty on products of Borneo.</li> <li>VII. Supplies for American ships of war.</li> <li>VIII. Shipwrecks.</li> <li>IX. Extraterritoriality in Borneo; ratification.</li> </ul> |
|---|--|

### China.

Treaty of Peace, Amity, and Commerce, July 3, 1844.

[As the Treaty of 1858 was negotiated as a substitute pro tanto, only the Articles not referred to therein are here set forth.]

#### Articles.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>VII. Tonnage duties on passenger and cargo boats.</li> <li>XII. Standard weights and measures.</li> <li>XV. Liberty to trade.</li> </ul> | <ul style="list-style-type: none"> <li>XXIII. Reports by consuls.</li> <li>XXVIII. Embargo.</li> <li>XXXIV. Duration; Ratification.</li> </ul> |
|---|--|

### China.

Treaty of Peace, Amity, and Commerce, June 18, 1858.

### China.

Treaty of Trade, Consuls, and Emigration, July 28, 1868.

### China.

Treaty as to Commercial Intercourse and Judicial Procedure, November 17, 1880.

### China.

Treaty as to Commercial Relations, October 8, 1903.

#### Articles.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>I. Diplomatic privileges.</li> <li>II. Consular privileges.</li> <li>III. Citizens in China.</li> <li>IV. Abolition of <i>likin</i>.</li> <li>V. Tariff duties.</li> <li>VI. Establishment of warehouses by United States citizens.</li> <li>VII. Mining regulations.</li> <li>VIII. Drawback certificates.</li> <li>IX. Trade-marks.</li> <li>X. Patents.</li> <li>XI. Copyrights.</li> <li>XII. Navigation of inland waters, and making Mukden and Antung open ports.</li> <li>XIII. Uniform coinage.</li> </ul> | <ul style="list-style-type: none"> <li>XIV. Religious liberty and concession to missionary societies.</li> <li>XV. Reformation of judicial system; extraterritorial rights.</li> <li>XVI. Morphia and instruments for its injection.</li> <li>XVII. Existing treaties continued in force; duration; revision of annexed tariff; and ratification.</li> </ul> |
|---|--|

#### Annexes.

- I. Opium and salt.
  - II. Native customs offices.
  - III. Tariff schedule.
- Note change of Rule II.

## Colombia (New Granada).

Treaty of Peace, Amity, Navigation, and Commerce, December 12, 1846.

## Articles.

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>I. Amity.</li> <li>II. Most-favored-nation clause.</li> <li>III. Commerce and navigation.</li> <li>IV. Mutual privileges of shipping.</li> <li>V. Customs duties.</li> <li>VI. Declaration of reciprocal treatment.</li> <li>VII. Freedom of trade.</li> <li>VIII. Embargo.</li> <li>IX. Asylum to vessels.</li> <li>X. Captures by pirates.</li> <li>XI. Shipwrecks.</li> <li>XII. Disposal of property.</li> <li>XIII. Mutual protection.</li> <li>XIV. Religious freedom.</li> <li>XV. Neutrality; free ships, free goods.</li> <li>XVI. Enemy's property.</li> <li>XVII. Contraband goods.</li> <li>XVIII. Trade by neutrals.</li> <li>XIX. Confiscation of contraband.</li> <li>XX. Blockade.</li> </ul> | <ul style="list-style-type: none"> <li>XXI. Visitation and search.</li> <li>XXII. Proof of nationality of vessels.</li> <li>XXIII. Vessels under convoy.</li> <li>XXIV. Prize cases.</li> <li>XXV. Conduct of hostilities.</li> <li>XXVI. Letters of marque.</li> <li>XXVII. Protection in case of war.</li> <li>XXVIII. Confiscation prohibited.</li> <li>XXIX. Diplomatic privileges.</li> <li>XXX. Consular officers.</li> <li>XXXI. Consular rights.</li> <li>XXXII. Consular exemptions.</li> <li>XXXIII. Deserters from ships.</li> <li>XXXIV. Agreement for consular convention.</li> <li>XXXV. Isthmus of Panama; duration; violations.</li> <li>XXXVI. Ratification.</li> </ul> |
|--|--|
- Additional article. Acceptance of nationality of vessels.

## Congo.

Treaty of Amity, Commerce, and Navigation, January 24, 1891.

## Articles.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>I. Freedom of commerce and navigation.</li> <li>II. Property rights.</li> <li>III. Exemptions of service.</li> <li>IV. Religious freedom.</li> <li>V. Consular officers.</li> <li>VI. Shipping privileges.</li> <li>VII. Transportation.</li> <li>VIII. Prohibitions.</li> </ul> | <ul style="list-style-type: none"> <li>IX. (Not agreed to.)</li> <li>X. Import duties.</li> <li>XI. Most favored nation privileges.</li> <li>XII. Other privileges.</li> <li>XIII. Arbitration.</li> <li>XIV. Conditions.</li> <li>XV. Ratification.</li> </ul> |
|---|---|
- Senate resolution of ratification.

## Corea (Korea).

Treaty of Peace, Amity, Commerce, and Navigation, May 22, 1882.<sup>1)</sup>

## Articles.

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>I. Amity.</li> <li>II. Diplomatic and consular privileges.</li> <li>III. Asylum; shipwrecks.</li> <li>IV. Protection in Korea; extritoriality.</li> <li>V. Shipping dues; imports.</li> <li>VI. Residence and travel.</li> <li>VII. Opium traffic.</li> <li>VIII. Exportation of breadstuffs and ginseng prohibited.</li> </ul> | <ul style="list-style-type: none"> <li>IX. Arms and ammunition.</li> <li>X. Employing natives, etc.</li> <li>XI. Privileges to students.</li> <li>XII. Duration.</li> <li>XIII. Language of correspondence.</li> <li>XIV. Most favored nation privileges; ratification.</li> </ul> |
|--|--|

## Costa Rica.

Treaty of Friendship, Commerce, and Navigation, July 10, 1851.

## Articles.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>I. Amity.</li> <li>II. Freedom of commerce and navigation.</li> <li>III. Most favored nation privileges.</li> <li>IV. No discrimination in duties.</li> <li>V. Tonnage duties.</li> <li>VI. No discrimination on vessels.</li> <li>VII. Equal trade privileges.</li> </ul> | <ul style="list-style-type: none"> <li>VIII. Equal treatment of citizens.</li> <li>IX. Exemption from military service, etc.</li> <li>X. Consular and diplomatic privileges.</li> <li>XI. Rights in case of war.</li> <li>XII. Property rights.</li> <li>XIII. Duration.</li> <li>XIV. Ratification.</li> </ul> |
|---|---|

<sup>1)</sup> Article II. of the agreement between Japan and Korea, November 17, 1905, provides: "The Government of Japan undertake to see to the execution of the treaties actually existing between Korea and other powers and

the Government of Korea engages not to conclude hereafter any act or engagement having an international character except through the medium of the Government of Japan."

## Cuba.

Commercial Convention, December 11, 1902.<sup>1)</sup>

## Articles.

- |  |  |
|--|--|
| <p>I. Articles on free list.</p> <p>II. Articles of Cuba admitted at reduction of 20 per cent.</p> <p>III. Articles of United States admitted at reduction of 20 per cent.</p> <p>IV. Articles of United States admitted at reductions of 25, 30, and 40 per cent, respectively.</p> | <p>V. Regulations to protect revenue.</p> <p>VI. Tobacco.</p> <p>VII. Similar articles.</p> <p>VIII. Rates of duty to continue preferential.</p> <p>IX. National or local taxes.</p> <p>X. Changes of tariff; revision of treaty.</p> <p>XI. Ratification; duration.</p> |
|--|--|

## Denmark.

Convention of Friendship, Commerce, and Navigation, April 26, 1826.<sup>2)</sup>

## Articles.

- |   |  |
|---|--|
| <p>I. Most favored nation clause.</p> <p>II. Freedom of trade.</p> <p>III. Equality as to shipping.</p> <p>IV. Import and export duties.</p> <p>V. Sound and belts dues.</p> <p>VI. Trade with Danish colonies.</p> | <p>VII. Property rights.</p> <p>VIII. Consular officers.</p> <p>IX. Consular privileges.</p> <p>X. Consular exemptions.</p> <p>XI. Duration.</p> <p>XII. Ratification.</p> |
|---|--|

## Denmark.

## Convention discontinuing the Sound Dues, April 11, 1857.

## Articles.

- |   |  |
|---|--|
| <p>I. Sound and Belts dues abolished.</p> <p>II. Lights, buoys and pilots.</p> <p>III. Payment by the United States.</p> <p>IV. Most favored nation privileges.</p> | <p>V. Convention of 1826 revived.</p> <p>VI. Effect.</p> <p>VII. Ratification.</p> |
|---|--|

## Egypt.

## Commercial Agreement and Customs Regulations, November 16, 1884.

[Based on a Convention relative to Commerce and Customs, between Egypt and Greece, made applicable to the United States.]

## Articles.

- |  |   |
|--|---|
| <p>I. Most favored nation clause.</p> <p>II. Prohibitions.</p> <p>III. Importations into Egypt.</p> <p>IV. Egyptian customs duties.</p> <p>V. Goods excluded.</p> <p>VI. Firearms.</p> <p>VII. Re-exports.</p> <p>VIII. Drawbacks on re-exported goods.</p> <p>IX. Egyptian export duties.</p> | <p>X. Effects of consular officers.</p> <p>XI. Shipping regulations.</p> <p>XII. Customs declarations.</p> <p>XIII. Customs officials.</p> <p>XIV. Fines and confiscations.</p> <p>XV. Administrative regulations.</p> <p>XVI. Duration.</p> <p>Additional article. — Taking effect of modified tariff.</p> |
|--|---|

<sup>1)</sup> *Sugar Refining Co. v. U. S.*, (1906) 144 Fed. 563, holds that this Convention became operative on December 17, 1903, when it was approved by the United States Congress and that the procuring of permits for the delivery of merchandise in bonded warehouses and the filing of them with the storekeeper, even though the merchandise was not actually withdrawn until some time later, constituted a constructive withdrawal and that the merchandise became subject to the duties applicable at the time of such constructive withdrawal. *M. J. Dalton Co. v. United States* (1907) 151 Fed. Rep. 143, holds that this treaty did not go into effect until December 27, 1903, when it was proclaimed by the President. *Faber v. United States*, (1907) 157 Fed. 140, holds that the reduction contemplated in Article II was from the rates provided in any general tariff law and not from those in special laws like the Philippine Tariff Act or

reciprocal commercial agreements and that the Philippines are not another country within the meaning of Article VIII of the treaty concerning preferential treatment. *United States v. American Sugar Refining Company*, (1906) 202 U. S. 563, fixes the date for the operation of the Treaty as December 27, 1903. — <sup>2)</sup> This convention was abrogated by notice April 15, 1856, and renewed by the convention of April 11, 1857, except Article V. *Thingvall v. U. S.*, 24 Ct. Cls. 255, holds that the provisions of the United States Immigration Act of 1882, imposing a tax upon passengers applies to those brought by Danish ships, notwithstanding the provisions of this treaty. *Bartram v. Robertson*, (1887) 122 U. S. 116, holds that this treaty does not require the United States to extend to Denmark tariff privileges which it had conceded to the Hawaiian Islands in exchange for valuable concessions.

**Ethiopia.****Treaty to Regulate Commercial Relations, December 27, 1903.****Articles.**

- |   |                                    |
|---|------------------------------------|
| I. Freedom to travel and transact business. | V. Representatives of Governments. |
| II. Security of persons and property.       | VI. Duration.                      |
| III. Customs duties, imposts, jurisdiction. | VII. Ratification.                 |
| IV. Use of means of transportation.         |                                    |

**France.****Convention of Navigation and Commerce, June 24, 1822.****Articles.**

- |                                      |   |
|--------------------------------------|---|
| I. Extra duties by American vessels. | VI. Deserters from ships.                 |
| II. Extra duties by French vessels.  | VII. Duration; reduction of extra duties. |
| III. Transit and re-exportation.     | VIII. Ratification.                       |
| IV. Ton described.                   | Separate article. Refund of extra duties. |
| V. Shipping charges.                 |   |

**Great Britain.****Convention of Commerce and Navigation, July 3, 1815.<sup>1)</sup>****Articles.**

- |  |  |
|--|--|
| I. Freedom of commerce and navigation.   | IV. Consuls.   |
| II. Import and export duties; shipping; trade with British possessions in West Indies and North America. | V. Duration; ratification.                               |
| III. Trade with British East Indies, etc.  | Declaration. Vessels excluded from island of St. Helena. |

**Greece.****Treaty of Commerce and Navigation, December 22, 1837.<sup>2)</sup>****Articles.**

- |                                       |   |
|---------------------------------------|---|
| I. Freedom of commerce.               | X. Vessels entering without unloading.    |
| II. Tonnage duties, etc.              | XI. Unloading part of cargo.              |
| III. Imports.                         | XII. } These articles abrogated by treaty |
| IV. Exports.                          | XIII. } concluded Nov. 19, 1902.          |
| V. Coasting trade.                    | XIV. }                                    |
| VI. Government purchases.             | XV. Quarantine.                           |
| VII. Navigation duties.               | XVI. Blockades.                           |
| VIII. No discriminating prohibitions. | XVII. Duration.                           |
| IX. Transit, bounties, and drawbacks. | XVIII. Ratification.                      |

**Hanseatic Republics (Bremen, Hamburg, and Lübeck).****Convention of Friendship, Commerce, and Navigation, December 20, 1827.<sup>3)</sup>****Articles.**

- |                                 |   |
|---------------------------------|---|
| I. Equality of duties.          | VII. Property rights.                             |
| II. Import and export duties.   | VIII. Special protection to persons and property. |
| III. Government purchases.      | IX. Most favored nation privileges.               |
| IV. Proof of Hanscatic vessels. | X. Duration.                                      |
| V. Rights to trade.             | XI. Ratification.                                 |
| VI. Commercial privileges.      |   |

<sup>1)</sup> This convention was continued in force for ten years by Article IV, Treaty of 1818, and indefinitely extended by the convention of August 6, 1827. — <sup>2)</sup> A protocol was signed on January 30 — February 10, 1890, declaring that reciprocally, joint stock companies and other associations, commercial, industrial, and financial, constituted in conformity with the laws of one country might exercise in the other country the rights and privileges under Article I of the Treaty. — <sup>3)</sup> North German Lloyd S. S. Co. v. Heddon, (1890) 43 Fed. 17, holds that the Act of

Congress of June 26, 1884, levying a three cent per ton duty on vessels from certain specified ports and a duty of six cents per ton on vessels from other foreign ports, did not entitle German vessels sailing from European ports to enter United States ports on payment of a duty of three cents per ton under the most favored nation clause of this treaty, since the discrimination in the Act is merely geographical and the three cent rate applies to vessels of all nations coming from the privileged ports.

## Honduras.

## Treaty of Friendship, Commerce, and Navigation, July 4, 1864.

## Articles.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>I. Amity.</li> <li>II. Freedom of commerce; coasting trade.</li> <li>III. Most favored nation privileges.</li> <li>IV. Equality of import and export duties.</li> <li>V. Shipping dues.</li> <li>VI. Reciprocal treatment of vessels.</li> <li>VII. Protection of property, etc.</li> <li>VIII. Disposal of property, etc.</li> <li>IX. Exemptions from military service, loans, etc.</li> </ul> | <ul style="list-style-type: none"> <li>X. Diplomatic and consular privileges.</li> <li>XI. Protection in case of war.</li> <li>XII. General liberties.</li> <li>XIII. Duration of Articles IV, V, and VI.</li> <li>XIV. Neutrality of Honduras Interoceanic Railway.</li> <li>XV. Ratification.</li> </ul> |
|---|--|

## Italy.

Treaty of Commerce and Navigation, February 26, 1871.<sup>1)</sup>

## Articles.

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>I. Freedom of commerce and navigation.</li> <li>II. Liberty to trade and travel.</li> <li>III. Rights of person and property; exemptions.</li> <li>IV. Embargo.</li> <li>V. No shipping discriminations.</li> <li>VI. No discriminations of imports and exports.</li> <li>VII. Shipping privileges.</li> <li>VIII. Exemptions from shipping dues, etc.</li> <li>IX. Shipwrecks.</li> <li>X. Completing crews.</li> <li>XI. Piratical captures.</li> <li>XII. Exemptions in war.</li> <li>XIII. Blockade.</li> </ul> | <ul style="list-style-type: none"> <li>XIV. Regulation of blockades.</li> <li>XV. Contraband articles.</li> <li>XVI. Rights of neutrals; free ships, free goods.</li> <li>XVII. Proof of nationality of vessels.</li> <li>XVIII. Right of search.</li> <li>XIX. Vessels under convoy.</li> <li>XX. Conduct of commanders of war vessels.</li> <li>XXI. Protection in case of war.</li> <li>XXII. Disposal of property.</li> <li>XXIII. Legal rights.</li> <li>XXIV. Most favored nation privileges.</li> <li>XXV. Duration.</li> <li>XXVI. Ratification.</li> </ul> |
|--|---|

## Japan.

Treaty of Commerce and Navigation, November 22, 1894.<sup>1)</sup>

## Articles.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>I. Mutual freedom of trade, travel, etc.; taxes; exemptions.</li> <li>II. Commerce and navigation.</li> <li>III. Inviolability of dwellings, etc.</li> </ul> | <ul style="list-style-type: none"> <li>IV. Import duties.</li> <li>V. Export duties.</li> <li>VI. Transit dues, etc.</li> <li>VII. Equality of shipping.</li> </ul> |
|---|---|

<sup>1)</sup> *Cantini v. Tillman*, (1893) 54 Fed. 969, holds that under Articles I. and II. of this treaty, Italian subjects have no greater rights to carry on trade and traffic in liquors within a state than has a citizen of the United States. *Fulco v. Schuylkill Stone Co.*, (1908) 163 Fed. 124, holds that the guarantee in this treaty of protection and security to persons and property and the right to resort to the courts as may the natives, does not give to an Italian subject who has never been in the United States and has no property there, the right to maintain an action under a state statute, which gives a right of action for wrongful death only to citizens or inhabitants of the State. *Fulco v. Schuylkill Stone Co.*, (1909) 169 Fed. 98, affirms the last mentioned decision and holds that the purposes of these treaty provisions just mentioned are limited to the prevention of invidious discriminations in favor of the citizens or subjects of one country and against the citizens or subjects of the other country with respect to the enjoyment or enforcement of privileges and rights of persons and property arising and

existing wholly independently of such provisions. *Storti v. Massachusetts*, (1901) 183 U. S. 138, holds that the provisions of this treaty only require that the same rights and privileges be granted in the United States to a citizen of Italy that are given to a citizen of the United States under like circumstances. *Maiorano v. Baltimore & Ohio Ry. Co.* (1909) 213 U. S. 268, holds that Articles II, III., and XXIII. of this treaty do not confer upon the non-resident alien relatives of a citizen of Italy, a right of action for damages for his death in one of the United States, although such an action is afforded by a statute of that state to native resident relatives. — <sup>2)</sup> *The Japanese Immigrant Case*, (1903) 189 U. S. 86, held that since this treaty with Japan expressly excepts from its operation regulations relating to police and public security, and since the Acts of Congress forbidding aliens to enter the United States who are paupers or persons likely to become a public charge, are such regulations, aliens from Japan of the prohibited class have no right to enter or reside in the United States.

- VIII. Tonnage, etc., dues.
- IX. Port regulations.
- X. Coasting trade.
- XI. Vessels in distress, shipwrecks, etc.
- XII. Nationality of vessels.
- XIII. Deserters from ships.
- XIV. Favored nation privileges.
- XV. Consular officers.

- XVI. Patents, trade-marks, and designs.
- XVII. Abolition of foreign settlements in Japan.
- XVIII. Former treaties superseded.
- XIX. Date of taking effect.
- XX. Ratification.
- Protocol.

### Liberia.

#### Treaty of Commerce and Navigation, October 21, 1862.

##### Articles.

- I. Amity.
- II. Freedom of commerce.
- III. No discrimination in vessels.
- IV. Imports and exports.
- V. Shipwrecks and salvage.

- VI. Most favored nation privileges.
- VII. Consuls.
- VIII. Non-interference in Liberia.
- IX. Ratification.

### Mecklenburg-Schwerin.

#### Treaty of Commerce and Navigation, December 9, 1847.

##### Articles.

- I. Freedom of commerce.
- II. Coasting trade.
- III. No preference to vessels importing.
- IV. Shipwrecks.
- V. Extent of shipping privileges.
- VI. Duties on imports and exports.

- VIII. Duties on cotton, rice, tobacco, and whale-oil.
- IX. Consular officers and functions.
- X. Trade and property rights.
- XI. Duration; increase of duties.
- VII. Most favored nation commercial privileges.

### Morocco.

#### Treaty of Peace and Friendship, September 16, 1836.

##### Articles.

- I. Emperor's consent.
- II. No service with an enemy.
- III. Captures.
- IV. Ships' passports.
- V. Right of search.
- VI. Release of captives.
- VII. Supplies to vessels.
- VIII. Repairs to vessels.
- IX. Shipwrecks.
- X. Protection of war ships.
- XI. Immunities of ports.
- XII. Freedom of war ships.
- XIII. Salutes.

- XIV. Most favored nation commerce.
- XV. Privileges to merchants.
- XVI. Exchange of prisoners.
- XVII. Trade privileges.
- XVIII. Examination of exports.
- XIX. No detention, etc., of vessels.
- XX. Consul to decide disputes in Morocco.
- XXI. Trials of homicides and assaults.
- XXII. Estates of deceased Americans.
- XXIII. Consular privileges.
- XXIV. Agreement in case of differences; most favored nation privileges.
- XXV. Duration.

### Muscat.

#### Treaty of Amity and Commerce, September 21, 1833.<sup>1)</sup>

##### Articles.

- I. Peace.
- II. Freedom of trade.
- III. Duties payable by American ships.
- IV. Duties, licenses, and charges.
- V. Shipwrecks.

- VI. Exemption from tax on trade.
- VII. Captures by pirates.
- VIII. Shipping charges in the United States.
- IX. Consular powers and immunities.
- Ratification.

### Netherlands (Holland).

#### Treaty of Commerce and Navigation, January 19, 1839.<sup>2)</sup>

##### Articles.

- I. Import and export duties, drawbacks, etc.
- II. Shipping charges.
- III. Consular officers.

- IV. Nationality of ships.
- V. Shipwrecks.
- VI. Duration.
- VII. Ratification.

<sup>1)</sup> This treaty was accepted by the Sultan of Zanzibar after the separation of that State from Muscat, and its Article III. is amended by the treaty of June 5, 1903, between the

United States and Great Britain, acting in the name of the Sultan of Zanzibar. — <sup>2)</sup> Articles I. and II. of this treaty are amended by the Convention of August 26, 1852.

## Netherlands.

Convention of Commerce and Navigation, August 26, 1852.

## Articles.

- |  |  |
|--|--|
| I. Import and export duties, bounties, drawbacks, etc. | IV. Coasting trade and fisheries.            |
| II. Trade with colonies of the Netherlands.            | V. Discriminations in favor of direct trade. |
| III. Shipping dues.                                    | VI. Duration and extent.                     |
|  | VII. Ratification.                           |

## Ottoman Empire (Turkey).

Treaty of Commerce and Navigation, May 7, 1830.

## Articles.

- |  |                                   |
|--|-----------------------------------|
| I. Trade privileges.                                   | V. Use of United States flag.     |
| II. Consular officers.                                 | VI. War vessels.                  |
| III. Treatment of United States merchants and vessels. | VII. Navigation of the Black Sea. |
| IV. Judicial treatment of United States citizens.      | VIII. Ships not to be impressed.  |
|  | IX. Shipwrecks.                   |
|  | Ratification.                     |

## Paraguay.

Treaty of Friendship, Commerce, and Navigation, February 4, 1859.

## Articles.

- |   |  |
|---|--|
| I. Friendship.                                  | IX. Trade privileges.                                |
| II. Freedom of navigation.                      | X. Property rights: estates of deceased persons.     |
| III. Most-favored-nation commercial privileges. | XI. Exemption from military service, etc.            |
| IV. No discriminations of imports and exports.  | XII. Diplomatic and consular privileges.             |
| V. Shipping dues.                               | XIII. Agreement in case of war.                      |
| VI. Carrying trade.                             | XIV. Protection of property; religious freedom, etc. |
| VII. Nationality of vessels.                    | XV. Duration.  |
| VIII. Import and export duties.                 | XVI. Ratification.                                   |

## Persia.

Treaty of Friendship and Commerce, December 13, 1856.

## Articles.

- |                                      |  |
|--------------------------------------|--|
| I. Friendship.                       | V. Trials of suits and offenses.         |
| II. Diplomatic privileges.           | VI. Effects of deceased persons.         |
| III. Most favored nation protection. | VII. Diplomatic and consular privileges. |
| IV. Import and export duties.        | VIII. Duration; ratification.            |

## Prussia.

Treaty of Commerce and Navigation, May 1, 1828.<sup>1)</sup>

## Articles.

- |  |  |
|--|--|
| I. Freedom of commerce and navigation.                         | IX. Most favored nation commercial privileges. |
| II. No discrimination of shipping charges.                     | X. Consular privileges and jurisdiction.       |
| III. No discrimination in import duties on account of vessels. | XI. Deserters from ships.                      |
| IV. Application of two preceding sections.                     | XII. Articles of former treaties revived.      |
| V. No discrimination of import duties.                         | XIII. Blockades.                               |
| VI. No discrimination of export duties.                        | XIV. Estates of deceased persons.              |
| VII. Coastwise trade.  | XV. Duration.                                  |
| VIII. No preference to importing vessel.                       | XVI. Ratification.                             |

<sup>1)</sup> As to the jurisdiction of Prussian consuls under the provisions of this treaty over Prussian seamen, see the *Bark Kreplin*, (1870) 4 Benedict. 417, and the *Elwine Kreplinc*, (1872) 9 Blatchf. 438, and *Ex parte Newman* (1872) 14 Wall. 152. *North German Lloyd S. S. Co. v. Hedden*, (1890) 43 Fed. 17, holds that the minimum tonnage tax imposed by the Act of Congress of June 26, 1884, on vessels coming from certain foreign ports does not entitle German vessels sailing from European

ports to enter United States ports on payment of this minimum tax, under the most favored nation clause of this treaty. *U. S. v. Diekelman*, (1876) 92 U. S. 520, held that no stipulations in this treaty except merchant vessels of Prussia from the rule of law that such vessels of the one country visiting the ports of another for the purpose of trade, are there subject to the laws which govern such ports. *Disconto Gesellschaft v. Umbreit*, (1907) 208 U. S., 570, held that while this treaty has been



## Russia.

Treaty of Commerce and Navigation, December 18, 1832.<sup>1)</sup>

## Articles.

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>I. Freedom of commerce and navigation.</li> <li>II. Reciprocal treatment of vessels.</li> <li>III. No discrimination on account of vessels importing.</li> <li>IV. Application of two preceding articles.</li> <li>V. Export duties.</li> <li>VI. Import duties.</li> <li>VII. Coastwise trade.</li> <li>VIII. Consular officers and powers.</li> </ul> | <ul style="list-style-type: none"> <li>IX. Deserters from ships.</li> <li>X. Estates of deceased persons.</li> <li>XI. Most favored nation commercial privileges.</li> <li>XII. Duration.</li> <li>XIII. Ratification.</li> </ul> <p>Separate article: Trade with Prussia, Sweden, Norway, Poland, and Finland.</p> |
|--|---|

## Servia.

## Convention of Commerce and Navigation, October 14, 1881.

## Articles.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>I. Freedom of commerce, navigation, and trade.</li> <li>II. Rights of real and personal property.</li> <li>III. Trade privileges.</li> <li>IV. Exemptions, etc.</li> <li>V. Prohibitions of imports, etc., restricted.</li> <li>VI. Import and export duties.</li> <li>VII. Freedom of imports.</li> </ul> | <ul style="list-style-type: none"> <li>VIII. Transit of goods.</li> <li>IX. Ad valorem duties.</li> <li>X. Exceptions of local traffic.</li> <li>XI. Freight on railways.</li> <li>XII. Trade-marks.</li> <li>XIII. Shipping charges.</li> <li>XIV. Duration.</li> <li>XV. Ratification.</li> </ul> |
|---|---|

## Siam.

Convention of Amity and Commerce, March 20, 1833.<sup>2)</sup>

## Articles.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>I. Peace.</li> <li>II. Freedom of trade, etc.</li> <li>III. Shipping duties in Siam.</li> <li>IV. Most favored nation duties.</li> <li>V. Shipwrecks.</li> </ul> | <ul style="list-style-type: none"> <li>VI. Settlement of debts.</li> <li>VII. Trading in Siam.</li> <li>VIII. Capture by pirates.</li> <li>IX. Laws of Siam.</li> <li>X. Consuls in Siam.</li> </ul> |
|---|--|

## Siam.

## Treaty of Amity and Commerce, May 29, 1856.

## Articles.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>I. Amity; mutual assistance.</li> <li>II. Consul at Bangkok; powers.</li> <li>III. Offenses in Siam.</li> <li>IV. Trade privileges in Siam.</li> <li>V. Americans in Siam.</li> <li>VI. Religious freedom, etc.</li> </ul> | <ul style="list-style-type: none"> <li>VII. Privileges to ships of war in Siam.</li> <li>VIII. Duties; trade, etc.</li> <li>IX. Treaty regulations.</li> <li>X. Most favored nation privileges.</li> <li>XI. Duration; revision.</li> <li>XII. Ratification.</li> </ul> |
|---|---|

recognized by both United States and the German Empire as being still in force, it contains no provisions undertaking to change the rule of international comity that permits a country first to protect the rights of its own citizens in local property, before permitting it to be taken out of its jurisdiction for administration in favor of creditors beyond its boundary.

<sup>1)</sup> Taylor v. Morton, (1855) 2 Curt. 454, held that the question of the observance of the most favored nation clause in this treaty, as to the duty upon products of one country imported into the other, addresses itself to the political and not to the judicial department of the Government. Ropes v. Clinch, (1875) 8 Blatchf. 304, held that Congress having imposed a higher duty on Russian hemp than on certain other imported hemp, such legislation

is a declaration by Congress that the most favored nation clause of this treaty, as to duties on imports shall no longer operate as the law of the land in respect to the duty on this article, and therefore destroys the operative effect of this treaty provision. Tucker v. Alexandroff, (1901) 183 U. S. 424, held that the provision in this treaty as to the arrest of deserting seamen cannot be enlarged, upon principles of comity, to embrace cases not contemplated by it, such as that of a conscript in the Russian naval service who had not yet taken service on board a ship in the ports of the United States. This treaty was denounced by the United States on December 19, 1911, and ceases to be operative after December 19, 1912. — <sup>2)</sup> The provisions of this treaty were modified by the treaty of 1856.

## Siam.

Modification to Treaty of Amity and Commerce of May 29, 1856.<sup>1)</sup>

## Spain.

Treaty of Friendship and General Relations, July 3, 1902.

## Articles.

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>I. Amity.</li> <li>II. Commerce; navigation; favored-nation treatment.</li> <li>III. Disposition of real and personal property.</li> <li>IV. Religious liberty.</li> <li>V. Exemptions of citizens and vessels.</li> <li>VI. Access to courts; favored-nation treatment.</li> <li>VII. Customs duties.</li> <li>VIII. Mutual privileges of shipping.</li> <li>IX. Coasting trade.</li> <li>X. Shipwrecks.</li> <li>XI. Nationality of vessels.</li> <li>XII. Diplomatic privileges.</li> <li>XIII. Consular officers.</li> <li>XIV. Consular privileges.</li> <li>XV. Consular exemptions.</li> </ul> | <ul style="list-style-type: none"> <li>XVI. Testimony by consuls.</li> <li>XVII. Arms and flags at consulates.</li> <li>XVIII. Consular offices and archives.</li> <li>XIX. Acting consular officers.</li> <li>XX. Vice-consuls and agents.</li> <li>XXI. Application to authorities by consuls.</li> <li>XXII. Notarial powers.</li> <li>XXIII. Shipping disputes.</li> <li>XXIV. Deserters from ships.</li> <li>XXV. Damages to vessels at sea.</li> <li>XXVI. Notice of decease of citizens.</li> <li>XXVII. Representation of minor heirs, etc.</li> <li>XXVIII. Favored-nation treatment of consuls.</li> <li>XXIX. Annulling of prior treaties.</li> <li>XXX. Duration.</li> <li>XXXI. Ratification.</li> </ul> |
|--|---|

## Sweden and Norway.

Treaty of Amity and Commerce, April 3, 1878.

## Articles.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>I. (Peace and friendship.)</li> <li>II. Most favored nation privileges.</li> <li>III. (Privileges to Swedish subjects in United States.)</li> <li>IV. (Privileges to United States citizens in Sweden.)</li> <li>V. Religious freedom.</li> <li>VI. Effects of deceased persons.</li> <li>VII. Commerce in case of war.</li> <li>VIII. Extent of freedom of commerce.</li> <li>IX. Contraband goods.</li> <li>X. Goods not contraband.</li> <li>XI. Ships' papers in case of war.</li> <li>XII. Navigation in time of war.</li> <li>XIII. Detention of contraband goods, etc.</li> <li>XIV. Goods on enemy's ships.</li> </ul> | <ul style="list-style-type: none"> <li>XV. Instructions to naval vessels.</li> <li>XVI. Bond from privateers.</li> <li>XVII. Recaptured ships; embargoes.</li> <li>XVIII. Regulations for war with common enemy.</li> <li>XIX. Prizes.</li> <li>XX. (Shipwrecks.)</li> <li>XXI. Asylum for ships in distress.</li> <li>XXII. Property rights in case of war.</li> <li>XXIII. Letters of marque.</li> <li>XXIV. (Shipping privileges.)</li> <li>XXV. Visit of war vessels.</li> <li>XXVI. (Consuls.)</li> <li>XXVII. Ratification.</li> <li>Separate article. Duration.</li> </ul> |
|---|---|

## Separate Articles.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>I. Defense of ships in Sweden.</li> <li>II. Defense of ships in United States.</li> <li>III. (Mutual protection of merchant vessels.)</li> </ul> | <ul style="list-style-type: none"> <li>IV. Right to trade.</li> <li>V. Freedom of vessels from search.</li> </ul> |
|---|---|

## Sweden and Norway.

Treaty of Commerce and Navigation, July 4, 1827.<sup>2)</sup>

## Articles.

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>I. Freedom of commerce and trade.</li> <li>II. Shipping dues.</li> <li>III. No discrimination on imports.</li> <li>IV. No discrimination on exports.</li> <li>V. Trade with St. Bartholomew.</li> </ul> | <ul style="list-style-type: none"> <li>VI. Coastwise trade.</li> <li>VII. No discriminations in purchases.</li> <li>VIII. Tonnage, etc., dues.</li> <li>IX. No restriction on imports.</li> <li>X. Transit privileges, bounties, etc.</li> </ul> |
|--|--|

<sup>1)</sup> Modifies Article I. of the regulations framed under Treaty of May 29, 1856. —

<sup>2)</sup> By notes from the Norwegian Chargé and the Swedish Minister to the Secretary of State dated respectively December 7th, and November 20, 1905, it was stated that their

Governments deemed treaties jointly concluded by Sweden and Norway to be in full force and effect as between them and the other contracting party or parties without regard to the separation of the two states.

- XI. Shipping privileges.
- XII. Discharge of cargoes.
- XIII. Consular officers and powers.
- XIV. Deserters from ships.
- XV. Shipwrecks.
- XVI. Quarantine.

- XVII. Articles of former treaty revived.
- XVIII. Blockade rules.
- XIX. Duration.
- XX. Ratification.
- Separate article. Trade with Finland.

### Switzerland.

Convention of Friendship, Commerce, and Extradition, November 25, 1850.<sup>1)</sup>

#### Articles.

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>I. Personal and property privileges.</li> <li>II. Civil duties and immunities.</li> <li>III. Return of citizens.</li> <li>IV. Passports.</li> <li>V. Real and personal property rights.</li> <li>VI. Civil suits.</li> <li>VII. Consular officers and privileges.</li> <li>VIII. Most favored nation commercial privileges. (Not in force.)</li> <li>IX. Export and import duties. (Not in force.)</li> </ul> | <ul style="list-style-type: none"> <li>X. Future commercial privileges. (Not in force.)</li> <li>XI. Differential duties. (Not in force.)</li> <li>XII. Shipping; shipwrecks. (Not in force.) (Articles XIII, XIV, XV, XVI, and XVII relate to extradition, and were terminated by extradition treaty of 1900.)</li> <li>XVIII. Duration.</li> <li>XIX. Ratification.</li> </ul> |
|--|--|

### Tonga.

Treaty of Amity, Commerce, and Navigation, October 2, 1886.

#### Articles.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>I. Amity.</li> <li>II. Most favored nation privileges.</li> <li>III. Trade privileges.</li> <li>IV. Commerce and navigation imports.</li> <li>V. Shipping charges.</li> <li>VI. Coaling station in Tonga.</li> <li>VII. Privileges to steam mail ships.</li> <li>VIII. Whaling and fishing ships.</li> </ul> | <ul style="list-style-type: none"> <li>IX. Personal exemptions.</li> <li>X. Deserters from ships.</li> <li>XI. Consular officers.</li> <li>XII. Consular jurisdiction.</li> <li>XIII. Religious freedom.</li> <li>XIV. Duration.</li> <li>XV. Ratification.</li> </ul> |
|---|--|

### Tripoli.

Treaty of Peace and Amity, June 4, 1805.

#### Articles.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>I. Peace, friendship, and commerce.</li> <li>II. Exchange of prisoners.</li> <li>III. Withdrawal of United States forces.</li> <li>IV. Neutral rights.</li> <li>V. Liberation of captive citizens.</li> <li>VI. Ships' passports.</li> <li>VII. Purchase of prizes.</li> <li>VIII. Asylum for supplies.</li> <li>IX. Shipwrecks.</li> <li>X. Assistance to vessels in territorial waters.</li> <li>XI. Most favored nation commercial privileges.</li> </ul> | <ul style="list-style-type: none"> <li>XII. Consular responsibility in Tripoli.</li> <li>XIII. Salutes to naval vessels.</li> <li>XIV. Religious freedom, etc.</li> <li>XV. Settlement of disputes.</li> <li>XVI. Treatment of prisoners.</li> <li>XVII. Captured vessels.</li> <li>XVIII. Judicial power of consul.</li> <li>XIX. Homicides, etc.</li> <li>XX. Estates of deceased persons; ratification.</li> </ul> |
|---|---|

### Zanzibar (See Muscat).

Treaty as to duties on Liquors and Consular Powers, July 3, 1886.

#### Articles.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>I. Duty on liquors.</li> <li>II. Consular powers.</li> </ul> | <ul style="list-style-type: none"> <li>III. Ratification.</li> </ul> |
|---|--|

**C. Enforcement and interpretation of treaties.** — The construction of treaties in the United States is a matter for the determination of the Courts, except in purely political cases<sup>2)</sup>. By the second section of the third article of the Constitution,

<sup>1)</sup> Notice given on March 23, 1899, of intention of United States to arrest the operation of Articles VII. to XII., inclusive. Articles XIII. to XVII., inclusive, terminated

by extradition treaty of May 4, 1900. —  
<sup>2)</sup> Jones v. Meehan, (1899) 175 U. S. 132; Foreign Relations of the United States, 1890, pp. 219, 226.

the judicial power of the United States is made to extend to all cases arising under the treaties. The decision of purely political questions, however, is the function of the political branch of the Government, of the Executive or of Congress as the case may be, and when a political question is so determined, the Courts follow that determination<sup>1</sup>). Nor will the Courts enforce the provisions of a treaty, which the Government of the United States as a sovereign Power, chooses to disregard<sup>2</sup>).

The Courts of the United States hold that a treaty is binding upon the contracting parties, unless otherwise provided, from the date of its signature<sup>3</sup>). Where individual rights are concerned, however, as in the exaction of duties on merchandise, treaties take effect on the date of the exchange of ratifications<sup>4</sup>).

The covenants or guarantees of a treaty when dependent on certain concessions, cannot be enforced until the concessions are actually made<sup>5</sup>).

In the construction of treaties, the general doctrine is that any special advantage conceded by a party under any one article is in consideration of all the advantages enjoyed by the same party under that and all other articles of the same treaty<sup>6</sup>).

No clauses of commercial treaties of the United States other than the so-called most favored nation clauses, have led to much correspondence with other governments, but regarding the effect of such clauses, which are contained in practically all such treaties, a sharp difference of opinion has resulted between the United States and various European nations. These clauses are in general of two different forms, one providing for most favored nation treatment without qualification and the other and more usual form providing that such treatment shall be accorded freely, if the concession was freely made and for the same compensation if it was conditional.

It has been maintained by the Government of the United States that the last mentioned proviso is "merely explanatory and inserted out of apparent caution. Its absence does not impair the rule of international law that such concessions are only gratuitous (and so transferable) as to third parties when not based on reciprocity or mutually reserved interests as between the parties. This ground has been long and consistently maintained by the United States<sup>7</sup>)."

In correspondence with the State Department of the United States various Governments have upheld the contrary view as to the effect of the absence of this proviso in most favored nation clauses, as for instance, France from 1817 to 1830<sup>8</sup>), Austria under the Treaty of 1829, Denmark under the Treaty of 1826, Mexico, Great Britain under the Treaty 1815, Germany, under the Prussian Treaty of 1828, Russia, under its Treaty of 1832, and Switzerland under its Treaty of 1850.

The attitude of the United States has, however, remained unchanged and as a result of a refusal on the part of Switzerland to accede to the views of the United States in this respect, the United States Minister to Switzerland, under instructions, gave notice on March 23, 1899, of the intention to arrest the operation of Articles VIII to XII inclusive of said Treaty of 1850, which accordingly terminated on March 23, 1900, under Article XVIII of the Treaty, providing for one year's notice.

It has been decided in the United States that neither engagements of extradition<sup>9</sup>), nor treaty stipulations declaring what shall and what shall not be regarded as contraband, come within the operation of the most favored nation clause<sup>10</sup>). On the other hand this clause has been held applicable to stipulations giving the right to consular officers to administer the estates of their deceased countrymen<sup>11</sup>).

The United States Supreme Court has held that the provisions of the American pilotage law, exempting from pilotage American coastwise vessels, is not an infringement of the treaty stipulation that British vessels shall pay no higher dues in ports of the United States than United States vessels<sup>12</sup>).

<sup>1</sup>) In re Cooper, (1891) 143 U. S. 472. —

<sup>2</sup>) *Botiller v. Dominguez*, (1888) 130 U. S. 238.

<sup>3</sup>) *Davis v. Concordia*, (1850) 9 How. 280. —

<sup>4</sup>) *Haver v. Yaker*, (1868) 7 Wall. 34; *Dooley v.*

U. S., (1901) 182 U. S. 222. — <sup>5</sup>) *Foreign Rel-*

*ations of the U. S.* 1871, 577. — <sup>6</sup>) *Cushing,*

*Attorney General*, 1853, 6 Opinions, 148. —

<sup>7</sup>) *Mr. Bayard, Secretary of State to Mr. Hub-*

*bard*, July 17, 1886, *Instructions to Japan*, Vol. 3,

p. 425. See also *Op. of Attorney General*, Vol. 21,

p. 80; *Note from the Secretary of State to the*

*Russian Minister*, February 16, 1895, *Foreign Relations*, 1895, Vol. 2, 1119, and letters from the Secretary of State to the Secretary of the Treasury, November 21, 1896, 214 *Domestic Letters*, 111, and January 8, 1897, 215. *ibid.* 131. — <sup>8</sup>) *Moore's International Law Digest*, Vol. 5, pp. 257—285. — <sup>9</sup>) *Cushing, Attorney General*, 1853, 6 Op. Atty.-Gen. 148. — <sup>10</sup>) *The James and William*, 37 Ct. Cls. 303. — <sup>11</sup>) *Fattosini*, (1900) 67 N. Y. Supp. 1119. — <sup>12</sup>) *Olsen v. Smith*, (1904) 195 U. S. 332.

The most favored nation clauses of treaties with the United States have been invoked by various foreign Governments as entitling them to the benefits of the Act of Congress approved June 26, 1884, imposing a minimum tonnage tax of three cents a ton, and not exceeding in the aggregate fifteen cents a ton in any one year, on vessels entering United States ports from any foreign ports or places in North America, Central America, the West Indies, the Bahamas, the Bermudas, the Hawaiian Islands, or Newfoundland. Under an opinion of the Attorney General of September 19, 1885, the United States has held that the discriminations in question are purely geographical in character ensuring to the benefit of any vessel of any Power and, therefore, were not extended by the most favored nation clauses of treaties.

**II. CONSULAR REGULATIONS.** — The latest volume of Regulations "Prescribed for the information and Government of the Consular Officers of the United States" bears date of 1896, since which time there have necessarily been many modifications of such regulations made either directly by order of the President or indirectly by the passage of new legislation by Congress. Especially is this true of the regulations on commercial matters, which have been naturally affected by the passage of several general tariff laws, the latest of which was enacted in 1909.

These regulations, as officially promulgated to date, and so far as they relate to commercial matters, are set forth below with references to the circulars which have been issued by the Department of State, to the decisions and customs regulations of the Treasury Department and to sections of the latest Tariff Act, affecting such regulations.

### Consular Regulations.

#### American or foreign built Vessels transferred abroad to Citizens of the United States.

**341. Right to acquire property in foreign ships.** The right of citizens of the United States to acquire property in foreign ships has been held to be a natural right, independent of statutory law, and such property is as much entitled to protection by the United States as any other property of a citizen of the United States.

**342. Treasury regulations: sea letters.** The existing general regulations of the Treasury Department<sup>1</sup>) under the customs and navigation laws (Customs Regulations, 1892) recognize the right of property in vessels of this character and declare them to be entitled to the protection of the authorities and to the flag of the United States, although no register, enrolment, license, or other marine document prescribed by the laws of the United States can lawfully be issued to such vessels whether they are American or foreign built. The former practice of issuing sea letters in the case of the purchase abroad of American or foreign vessels by citizens of the United States is no longer authorized. Nevertheless, though the issuing of sea letters to such ships is not now authorized, yet there would seem to be no good reason upon the face of our present legislation why the Department of State should not resume the practice, in case the United States should be a neutral in a war between maritime powers, if it should deem such letters more protective in their character than consular or customs certificates of sale. See Art. 3 Navigation Laws and Regulations, 1907, and Circular<sup>2</sup>) of February 13, 1900.

**343. Record of bill of sale, certificate, etc.** In view of existing regulations, and to enable the owners of a vessel so situated to protect their rights, if molested or questioned, a consular officer, though forbidden by law to grant any marine document or certificate of ownership, may lawfully make record of the bill of sale in his office, authenticate its execution, and deliver to the purchaser a certificate to that effect; certifying, also, that the owner is a citizen of the United States. Before granting such a certificate the consular officer will require the tonnage of the vessel to be duly ascertained in pursuance of law and insert the same in the description of the vessel in his certificate. (Form No. 35.) These facts thus authenticated, if the transfer is in good faith, entitle the vessel to protection as the lawful property of a citizen of the United States; and the authentication of the bill of sale and of citizenship will be *prima facie* proof of such good faith.

**346. Certificate, when to be issued.** When a consular officer shall have satisfied himself, after the investigation with which he is charged, that the sale of a vessel is not fictitious and is made in good faith, and that the purchaser is a citizen of the United States, it is his duty, when requested, to record the bill of sale in the consulate, and to deliver the original to the purchaser, with his certificate annexed thereto, according to form No. 35. A copy of the bill of sale, together with any other papers belonging to the transfer, and of the consular certificate should be sent without delay to the department of state, with a report of the facts and circumstances of the transaction.

**347. Right to fly the flag.** The privilege of carrying the flag of the United States is under the regulation of congress, and it may have been the intention of that body that it should be used only by regularly documented vessels. No such intention, however, is found in any statute.

<sup>1</sup>) Now Department of Commerce and Labor. — <sup>2</sup>) The Circulars referred to throughout are those issued by the Department of State.

And as a citizen is not prohibited from purchasing and employing abroad a foreign ship, it is regarded as reasonable and proper that he should be permitted to fly the flag of his country as an indication of ownership and for the due protection of his property. The practice of carrying the flag by such vessels is now established. The right to do so will not be questioned, and it is probable that it would be respected by the courts.

**348. Disabilities of foreign-built vessels.** It should be understood that foreign-built vessels not registered, enrolled, or licensed under the laws of the United States, although wholly owned by citizens thereof, can not legally import goods, wares, or merchandise from foreign ports, and are not allowed in the coasting trade. R. S. secs. 2497, 4311. See Circular, February 6, 1892.

**349. Forfeiture and tonnage duties.** On arrival from a foreign port undocumented foreign-built vessels, if laden with goods, wares, or merchandise, may, with their cargoes, be subjected to forfeiture. R. S., sec. 2497; see Tariff Act of 1894, sec. 15. If in ballast only, or with passengers without cargo, they will be subject to a discriminating tonnage duty. R. S., sec. 4219; 19 Stat. L., 250. When in foreign ports they are also subject to tonnage and other consular fees from which regularly documented vessels are exempt. For instructions respecting the shipment and discharge and relief of seamen on vessels of this character, and the collection of extra wages, consular officers are referred to the several articles on these subjects.

### Regulations touching the Importation of neat Cattle and Hides.

**381. Issued by treasury department.** The treasury regulations made, or which may hereafter be made, in pursuance of section 17 of the act of August 28, 1894, to prevent the introduction or spread of contagious or infectious diseases among the cattle of the United States, are to be regarded as a part of the consular regulations in so far as they impose duties on consular officers. 28 Stat. L., 550. See Section 12, Tariff Act 1909 and Circulars, July 1 and 19, 1901, August 26, 1901, April 28, 1903, and May 11, 1910.

**382. Issued by agricultural department.** The regulations issued, or which may be issued, by the department of agriculture under the authority of the act of August 30, 1890, concerning the importation of neat cattle, sheep, and other ruminants and all swine (sections 7, 8, 9, and 10) are likewise made a part of the consular regulations to the extent that they require the cooperation of the consular officers. 26 Stat. L., 416. (See Circular November 2, 1910.)

**383. Animals subject to quarantine regulations also.** The cattle and other animals to which these regulations of the Treasury Department and the department of agriculture apply may also be subject, as importations liable to bring disease injurious to human life, to the operation of the quarantine laws and regulations. (See Circulars September 27, 1897 and February 10, 1898.)

**384. Expense, how defrayed.** The expense of executing these regulations is to be borne by the vessels on which the animals are exported. 26 Stat. L., 417.

### Use of Name as business Reference reporting financial Standing of foreign business Men or Houses.

**458.** Consular officers are forbidden to allow the use of their names as references for business or other enterprises, and they are not authorized to report to private inquirers concerning the financial standing or commercial repute of business men or houses in their districts. They may, however, refer such inquiries to banks or other business agencies, if any that can answer them; or they may quote the ratings of local business agencies. (See Circulars, March 23, 1906 and August 7, 1906.)

### Answers to Inquiries of Citizens of the United States.

**459.** Inquiries made by citizens of the United States touching business matters, or other matters not of mere curiosity, should be answered as far as they can be consistently with the consul's other duties. All inquiries of this character should be acknowledged, even when it is impracticable to answer them. The postage on such correspondence is a proper charge against the allowance for contingent expenses. When the information sought relates to commercial or industrial matters of general interest, the answer should be sent to the department of state, to be transmitted to the inquirer after the department has extracted any portion that it may desire to publish for the information of the public.

### Tonnage Fees.

**524. Tonnage fees.** The tonnage fees provided for in fees 106 and 107 of the tariff and fees for granting Forms Nos. 13 and 14 are not charged by feed officers against the treasury for American vessels running regularly, by weekly or monthly trips or otherwise, to or between foreign ports for more than four trips in a year. These fees are chargeable for each vessel on the first four trips in each calendar year. They are chargeable by the consular officer at the foreign port where the principal offices of the steamship company or owners are located. They are not to be charged at other consular offices on the route, whether within or without the same allegiance. Consular fees other than tonnage fees are chargeable for official services performed for such vessels; and when a vessel makes a special trip to a foreign port other than that to which she runs on her regular trips, the consul at the port thus visited is entitled to receive tonnage fees for the special trip, and the vessels are not exempt from the requirement to deposit the ship's papers at each port where an arrival is made. R. S., sec. 1720; 1 Comp. Dec., 374.

**525. Tonnage fees in Canada.** No consul, vice-consul, or consular agent in the Dominion of Canada is allowed tonnage fees for any services, actual or constructive, rendered any vessel owned and registered in the United States that touches at a Canadian port. The word "touches" in this statute means that a vessel may enter a port, if such entry is connected with the purposes of her voyage. R. S., sec. 1722; 8 Saw., 350. If consistent with such purposes, taken in conjunction with the customs of the particular trade, she may land or load cargo there. Nor are these fees to be charged for such vessels touching at or near ports in Canada on their regular voyages from one port to another within the United States, unless some official services required by law shall be performed by the consular officer. This statute, however, is held not to relieve the master of a registered vessel engaged in commerce between the United States and Canada from the provision of law which requires the deposit of the vessel's papers with the consular officer. 21 Op. Att. Gen. 190. (See Navigation Laws of the United States.)

#### Discriminations.

**599. Discrimination by foreign countries against products of the United States.** The act of August 30, 1890, provides that when the president shall be satisfied that unjust discriminations are made by or under the authority of any foreign state against the importation to or sale in such foreign state of any product of the United States, he may direct that such products of such foreign state so discriminating against any product of the United States as he may deem proper shall be excluded from importation to the United States; and in such case he shall make proclamation of his direction in the premises, and therein name the time when such direction against importation shall take effect, and after such date the importation of the articles named in such proclamation shall be unlawful. The president may at any time revoke, modify, terminate, or renew any such direction as, in his opinion, the public interest may require. 26 Stat., 415, sec. 5.

Consular officers are instructed to report to the secretary of state all instances occurring in their respective districts of discrimination against the importation or sale therein of products of the United States, furnishing, when practicable, the text and a translation of the law or regulation by means of which the discrimination is effected.

#### Reports for the Use of the Treasury Department.

**600. Prices current.** Every consular officer shall furnish to the Secretary of the Treasury, as often as shall be required, the prices current of all articles of merchandise usually exported to the United States from the port or place in which he is situated. R. S., sec. 1713; 25 Stat. L., 186. (Paragraph 697.)

**601. Rates of exchange.** Consular officers will report monthly to the treasury department the rates of exchange prevailing between the ports or places at which they reside and the following places: London, Paris, Amsterdam, and Hamburg; also New York and other principal ports in the United States; and they will keep the department of state regularly and fully advised of the course and progress of trade from the several ports of their consulates to the United States.

#### Reports for the Use of the Department of Agriculture.

**602. Consuls and commercial agents of the United States in foreign countries shall procure and transmit to the department of state, for the use of the department of agriculture, monthly reports relative to the character, condition, and prospective yields of the agricultural and horticultural industries and other fruiteries of the country in which they are respectively stationed; and the secretary of agriculture is required and directed to embody the information thus obtained, or so much thereof as he may deem material and important, in his monthly bulletin of crop reports. R. S., sec. 1712; 25 Stat. L., 186. (See Circular September 8, 1910.)**

**603. Every consular officer shall also furnish to the secretary of the treasury, at least once in twelve months, the prices current of all articles of merchandise, including those of the farm, the garden, and the orchard, that are imported through the port or place in which he is stationed. And he shall also report as to the character of agricultural implements in use, and whether they are imported to or manufactured in that country, and as to the character and extent of agricultural and horticultural pursuits there. That part of the information thus obtained which pertains to agriculture shall be transmitted by the secretary of the treasury, as soon as the same shall have been received by him, to the secretary of agriculture, who shall include the same, or so much thereof as he may deem material and important, in his annual reports, stating the said prices in dollars and cents and rendering tables of foreign weights and measures into their American equivalents. R. S. sec. 1713; 25 Stat. L., 186. (See Circular October 15, 1909.)**

#### Invoices of Importations.

**654. Ports of entry.** The customs laws of the United States require that imported merchandise shall be entered at certain ports on the coast or frontier called "ports of entry." The merchandise on arrival at the port of entry may be entered for immediate consumption, in which case it is appraised, examined, classified, and delivered to the consignee on payment of the estimated duty; or it may be entered in bond for appraisement and storage in any public or private bonded warehouse. R. S., secs. 2770, 2772, 2962. A list of the customs collection districts, with their respective ports of entry and delivery, is published from time to time by the secretary of the treasury and furnished to consuls. (See Circulars July 12, 1909, and January 12, 1909.)

**655. Immediate-transportation ports.** At certain specified ports merchandise may be entered informally for immediate transportation, without appraisement, to certain specified ports of delivery, where provision is made for entry and appraisement in the same manner as at an original port of arrival. Lists are published from time to time by the secretary of the treasury of the ports at which merchandise may be entered for immediate transportation, and also of the ulterior ports to which merchandise may be so transported. 21 Stat. L., 173.

**656. Consignee deemed owner. Must be resident.** All merchandise imported into the United States is, for customs purposes, deemed and held to be the property of the person to whom the merchandise has been consigned. The holder of any bill of lading covering merchandise consigned to order and indorsed by the consignor is deemed the consignee thereof. In case of abandonment of merchandise to the underwriters they may be recognized as the consignees. 26 Stat. L., 131, sec. 2. The consignee must be a resident of the United States to enable him to make entry of imported merchandise. S. 14019<sup>1</sup>).

**657. Certified invoices required.** Except in case of personal effects accompanying a passenger, no imported merchandise exceeding \$ 100 in value will be admitted to entry without the production of a duly certified invoice thereof, or of an affidavit by the owner, importer, or consignee before the collector, showing that it is impracticable to produce such invoice. 26 Stat. L., 131, sec. 4; S. 13098. This rule applies to importations of furniture and household effects of private persons, to merchandise imported for the use of the United States, but not to merchandise which is the product, growth, or manufacture of the United States returned after exportation therefrom. The declaration (Form No. 129) prescribed in paragraph 713 is sufficient for returned American merchandise. S. 14 210. (Paragraphs 706, 712—716.)

**658. Personal effects.** Wearing apparel and other personal effects (not merchandise) of persons arriving in the United States are entitled to entry without certified invoices. But this exemption does not include articles not actually in use and necessary and appropriate for the use of such persons for the purposes of their journey and present comfort and convenience, or which are intended for any other persons or for sale. Tariff of 1894, par. 669; S. 12630, 15306. They must actually accompany the passenger, unless sent by other conveyance on account of accident or other cause beyond the owner's control. S. 13490, 14480, 15364, 16497.

**659. Transit goods.** Merchandise passing through the United States in transit to a foreign country and goods shipped from one port or place in the United States through foreign territory to another port or place in the United States are not importations, and such shipments do not require certified invoices. 133 U. S., 273; S. 9378, 11778, 13901, 14346, 15348, 15782, 16913. (See par. 418 Customs Regulations.)

**660. Gold and silver bullion.** Specie and gold and silver bullion, transmitted as money in the regular method of foreign exchange, are not subject to the restrictions imposed upon imported merchandise; but bullion exceeding \$ 100 in value, alleged to be imported as money, will not be admitted to entry without a consular invoice or a bond for the production of such invoice, unless it be shown by the shipper's declaration made before the consular officer at the port of shipment that such bullion is intended to be forwarded as money or medium of exchange at a fixed value per ounce, and not as merchandise. S. 11895, 13392, 14122, 14575, 16884. (See Executive Order, November 6, 1902, *post*.)

**661. Importations broken into small lots.** Importations not exceeding \$ 100 in value may be admitted to entry for consumption or for immediate transportation without a certified invoice and without requiring a bond for the production of such invoice; but if the collector believes that the importation has been broken into small lots for the purpose of evading the requirements of the law, he may demand a bond for the production of a certified invoice. Consular officers will notify collectors of suspected divisions of shipments in evasion of the law and will furnish them with such evidence of fraudulent intent as may be obtained. S. 10293, 10579, 11457, 12420, 15061, 16490, 16501, 16605.

**662. Preparation of invoices.** Invoices must be made out on firm, durable paper, in legible and permanent characters, by writing with ink or by other process producing the same result. Press copies will not be accepted. Hectograph copies will be rejected, except that a hectograph copy of a long and involved invoice, neatly and legibly produced on durable paper, may be accepted. Shippers should be required to have the invoice statements clear, legible, well arranged, and free from error, in order to avoid difficulty and delay in entering the merchandise and in the liquidation of the entry. Cust. Reg., 290; S. 15276. The invoice is required to be in triplicate (three originals); and in case of merchandise intended for immediate transportation to another port without appraisement it must be in quadruplicate. 26 Stat. L., 131, sec. 2. (See Circulars December 30, 1900, April 30, 1901, October 11, 1902, July 9, 1907, October 24, 1908 and November 17, 1910.)

**663. Consolidating invoices.** Merchandise purchased for export to the United States must not be included in one invoice with merchandise obtained otherwise than by purchase. It is desirable that an invoice shall include only one shipment of merchandise from the same place to the same consignee. Merchandise shipped to different consignees should not be included in the same invoice. S. 13745. (*As to invoices of fruit, see S. 16605.*) The consignor need not be the owner of the merchandise, and the consignee may be a distributing agent who for-

<sup>1</sup> "S" is an abbreviation for "Synopsis of Treasury Decisions."



wards the merchandise after entry to several parties for whose use it was exported. S. 9599, 12602, 13012, 13711, 14081, 16605.

**664. Consignment to branch house.** Merchandise sold to an importer in the United States, but shipped to the seller's branch house in the United States for delivery to the purchaser, should be invoiced as merchandise consigned by the seller to his branch house. (Form No. 139.) (See Circular, Treasury Department, March 1, 1907.)

**665. In what currency stated.** Invoices of merchandise for export to the United States must be made out in the currency of the place or country from which the exportation is made; or, if purchased, in the currency actually paid therefor. The market value of merchandise obtained otherwise than by purchase must be stated in the invoice in the standard coin currency of the country from which the merchandise is exported, although a depreciated currency may be in circulation there. 26 Stat. L., 131, sec. 2; Tariff of 1894, sec. 25; S. 10587, 11314, 11641, 13485, 14246, 14280, 15435.

**666. Description of goods.** The invoice must contain a correct description of the merchandise, using in each item the name, if any, by which the particular variety is known to the trade in the country of production or exploration. The description should show its kind, quality, component parts, and such other characteristics as will enable a person not an expert to identify the merchandise as produced in the foreign market, and will assist consular and appraising officers in detecting any departure from the actual market value thereof. S. 9705, 10608, 13005, 14530, 14686. Vague and misleading specifications are *prima facie* indications of fraud, and should put the consul on inquiry. They may also result in expensive complications to the importer, who is held to the statements contained in his invoice and entry. Invoices must express the quantities of the merchandise in the weights and measures of the country of exportation, and they are usually, but not necessarily, made out in the language of that country. S. 13222, 16447. (See Circular March 11, 1901.)

**667. Invoice to be signed.** If the merchandise was obtained by purchase, the invoice is to be signed by the person owning or shipping the same; and if it was procured otherwise than by purchase, it is to be signed by the manufacturer or owner. In case the purchaser, manufacturer, or owner cannot for any reason sign, a duly authorized agent may sign for him and in his name. (Paragraph 672.) The signature may be affixed to the invoice at the shipper's place of business, at the consular office, or elsewhere. 26 Stat. L., 131, sec. 2; S. 16380.

**668. Shipper's declaration.** At or before the shipment of the merchandise the invoice must be produced (in person, not through the mails or by messenger, S. 12749) to the consular officer of the United States for the consular district in which the merchandise was manufactured or purchased, as the case may be, for export to the United States; and it shall have indorsed thereon, when so produced, a declaration signed by the purchaser, manufacturer, owner, or agent, in the same manner as the invoice is signed, setting forth: (See Circulars August, 1901, February 7, 1906 and September 16, 1908.)

1. That the invoice is in all respects correct and true; 2. That it was made at the place from which the merchandise is to be exported to the United States; 3. That it contains, if the merchandise was obtained by purchase, a true and full statement of the time when, the place where, and the person from whom the same was purchased, price paid, or to be paid therefor, and of all charges thereon as provided by law; 4. That no discounts, bounties, or drawbacks are contained in the invoice other than such as have been actually allowed thereon; 5. That it contains, when the merchandise was obtained in any other manner than by purchase, the actual market value or wholesale price thereof, at the time of exportation to the United States, in the principal markets of the country whence exported; 6. That such actual market value is the price at which the merchandise described in the invoice is freely offered for sale to all purchasers in said markets, and that it is the price which the manufacturer or owner making the declaration would have received, and was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities; 7. That it includes all charges thereon, as provided by law; 8. That no different invoice of the merchandise mentioned in the invoice so produced has been or will be furnished to anyone; 9. If the merchandise was actually purchased, the declaration shall also contain a statement that the currency in which such invoice is made out is that which was actually paid for the merchandise by the purchaser.

The declaration may be accompanied by a translation into the language of the country of export, printed on the same paper in a parallel column with the English original. 26 Stat. L., 131, sec. 3. (See Circular August 1, 1907.)

(By an executive order dated June 1, 1907, the following change in paragraph 668 is made:

The personal appearance before the consular officer shall be demanded only in exceptional cases, where special reasons require a personal explanation.)

**669. Further declaration when goods subject to *ad valorem* duty.** Shippers of goods subject, either wholly or in part, to a duty based upon their value must in all cases make a further declaration (on the same form) setting forth separately:

1. The net price of the merchandise free from all charges of commission, packing, etc., or, in case the merchandise is shipped on consignment, the actual net market value thereof in the principal markets of the country from which the shipment is made, by its weight, measure, or quantity; 2. The cost of transportation to the port of shipment; 3. The cost of shipment (see Circular July 5, 1901); 4. The amount of packing charges, including boxing, tillooting,

packing, cartons, etc.: 5. Insurance, commissions, discounts, legalization, and all costs of any kind, nature, or description incurred in preparing the goods for the market of the United States, separately set forth.

When, however, it is impossible for the shipper to give the information required under the third, fourth, and fifth heads, or any of them—as, for instance, when such charges or any part of them are non-existent or unascertained at the time of shipment, or are to be paid by the consignee—such items may be omitted, the cause of omission being stated instead.

Itemized statements of these charges are not required for merchandise not subject to ad valorem duty; for statistical purposes, however, the total amount of those charges should be stated. (See Circular May 14, 1907.)

**670. Forms of declaration.** The shipper's declaration indorsed upon invoices of merchandise purchased for export to the United States differs in some material particulars from the shipper's declaration indorsed on merchandise obtained otherwise than by purchase. Two forms of declaration have therefore been prescribed for the use of the shipper: 1. The declaration to be made where merchandise actually purchased is exported to the United States. (Form No. 138.); 2. The declaration to be made where merchandise obtained otherwise than by purchase is exported to the United States. (Form No. 139.)

**671. Who may make declaration.** Invoices of goods to be exported to the United States shall be declared for certification by the purchaser, manufacturer, owner, or agent. 26 Stat. L., 131, sec. 3. No one will be recognized as such purchaser, manufacturer, or owner who acts merely as broker or commissioner, without other property interest in the merchandise than that of brokerage or commission. As the purchaser is in many instances the importer and is not in the country of exportation, the seller, acting in the purchaser's behalf, ships the merchandise and may make the invoice and declaration. (Form No. 138.) He is in reality the agent of the purchaser for the purpose of exporting the merchandise, but for customs purposes and to facilitate trade the seller is permitted to act as a principal and to make the declaration in his own name as seller. S. 10614, 16380.

**672. Invoice or declaration signed by agent.** An agent is permitted to sign an invoice or declaration only when it is impracticable for his principal to sign it. Before signing he must have been duly authorized to act for and bind the shipper. He must also be qualified in other respects to perform the delegated service. He must have the same personal knowledge of the facts set forth in the invoice and declaration that would be required of him if he were the principal. A messenger or clerk unacquainted with the history and facts specified in the invoice is not qualified to sign it or to make the declaration prescribed. A declaration intended for signature by an agent should be in the principal's name and in the same form as if prepared for the principal to sign. It should also be signed in the principal's name, the name and designation of the agent being appended, thus: "Richard Baxter & Co., by William E. Morrison, Agent." The agent's name should not appear in the body of the declaration, and there is no need of special averment in it setting forth the agent's authority and qualification and the reason why the principal himself does not produce the invoice. The agent's subscription and the consul's certificate sufficiently indicate to collectors of customs not only the fact, but the propriety, of the execution by agent. S. 8360, 8415, 8490, 16380. (See Circular June 4, 1900.)

**673. Powers of attorney. Revocation. Renewal.** A general form of power of attorney to sign invoices and the declarations thereto is given in form No. 104; but the authority of an agent for this purpose should be conferred and authenticated in the manner required by the local law, in order that there may be no question as to the legal validity of the agency in the country wherein it is exercised.

There is no occasion for the consular authentication of a power of attorney received for the use of the consular office, nor for requiring a renewal of these powers of attorney upon a change in the head of the consular office. A valid power once executed and filed is sufficient for the purpose until revoked. The revocation may be expressed or implied from circumstances. Care should be taken to cancel all revoked powers, and a new consul should always satisfy himself as to the continued validity of the powers of attorney found in his office before he permits the agents named therein to act under them. S. 14029, 14030, 14998, 15431, 15622.

**674. Consignment for sale. Statement of cost.** When merchandise entered for customs duty has been consigned for sale by or on account of the manufacturer thereof to a person, agent, partner, or consignee in the United States, such person, agent, partner, or consignee is required at the time of the entry of such merchandise to present to the collector of customs at the port where such entry is made, as a part thereof, a certificate (Form No. 171) showing the actual cost of production of such merchandise, including cost of materials and of fabrication, all general expenses of each and every outlay of whatever nature incident to such production, together with the expense of preparing and putting up such merchandise ready for shipment. When merchandise similarly entered has been consigned for sale by or on account of a person other than the manufacturer thereof to a person, agent, partner, or consignee in the United States, such person, agent, partner, or consignee is required at the time of the entry of such merchandise to present to the collector of customs at the port where such entry is made, as a part thereof, a statement (Form No. 172), signed by the consignor thereof, declaring that the merchandise was actually purchased by him or for his account, and showing the time when, the place where, and the person from whom the purchase was made, and in detail the price he paid for the same.

These statements of the consignor are required to be made in triplicate, and to bear the attestation of the consular officer resident within the consular district wherein the merchandise was manufactured, if consigned by the manufacturer or on his account, or from whence it was imported when consigned by a person other than the manufacturer, one copy thereof to be delivered to the person making the statement, one copy to be transmitted with the triplicate invoice of the merchandise to the collector of the port in the United States to which the merchandise is consigned, and the remaining copy to be filed in the consulate. 26 Stat. L., 135, secs. 8, 11; S. 10580, 11471, 11779, 11957, 12467.

The difficulty of enforcing this provisions has been found so great that the treasury department has not exacted a literal compliance with it in cases where the declared value of the merchandise has been found on appraisement to be correct; but in case the appraisers are unable to arrive at a final decision in regard to the dutiable value of any imported merchandise consigned directly from the manufacturer, the itemized certificate of cost will be demanded and appraisement will be deferred until it is produced. 26 Stat. L., 135, sec. 11; S. 12467.

By an executive order dated June 1, 1907, paragraph 674 of the consular regulations of 1896 is amended so that the statements provided for in section 8 of the customs administrative act are not to be required by consular officers except upon the request of the appraiser of the port, after entry of the goods.

**675. Port of entry to be declared.** The person producing the invoice is required to declare the port in the United States at which it is intended to make entry of the merchandise. R. S., sec. 2855. Where the shipper is uncertain as to the port of destination of the merchandise, he may name the most probable port of arrival or of entry, and the triplicate invoice should be sent to the collector of customs at that port. 27 Stat. L., 41; S. 12871. If the merchandise should be entered at another port, the invoice will, upon timely notice, be forwarded by the collector receiving it to the collector at the port of actual entry; and in case of delay or loss of the invoice an entry may be made upon a pro forma invoice, as is provided in section 2857 of the revised statutes, under bond for the production of the consular invoice.

**676. When vessel to carry goods is unknown.** When merchandise intended for exportation to the United States is invoiced at an interior port, and it is impracticable at the time of shipment from such interior port to state with certainty the name of the vessel by which the merchandise is to be shipped, the invoice may state the name of the vessel by which it is expected to be shipped; and in case the merchandise is shipped by another vessel the consular officer at the final port of shipment may, at the request of the shipper or his agent, indorse on the shipper's copy the name of the vessel by which the same is actually shipped. By an executive order dated June 1, 1907, the following change in paragraph 676 is made: The declaration of the name of the ship in the invoice shall be dispensed with whenever the exporter at the time the invoice is presented for authentication is unable to name the ship.

**677. Goods exported without sale, where certified.** The invoice of merchandise, manufactured or otherwise, produced for export to the United States and exported without previous sale must be certified in the consular district in which it was manufactured or produced. S. 11767. But merchandise manufactured in an unfinished condition (e. g., cotton woven in the gray) in one country or consular district and finished by an additional manufacturing process in another country or consular district for export to the United States is regarded as a manufactured product of the country or district in which the finishing process is effected. Merchandise purchased in an unfinished state of manufacture and subjected to a finishing process by the purchaser, or at his expense, before export to the United States, is held to be a manufacture of the purchaser; and the invoice must be certified by the consul of the consular district in which the last manufacturing process has taken place. S. 11468; 14 Blatchf., 550.

**678. Purchased goods, where certified.** Invoices of merchandise purchased for export to the United States must be produced for certification to the consul of the district at which the merchandise was purchased, or in the district in which it was manufactured, but as a rule consular officers shall not require the personal attendance at his office of the shipper, purchaser, manufacturer, owner, or his agent, for the purpose of making declarations to invoices, but he shall certify invoices sent to him through the mails or by messenger. As place, in which the merchandise was purchased, is to be considered the place where the contract was made, whenever this was done at the place where the exporter has his office. To conform to the statute which requires that merchandise shall be invoiced at the market value or wholesale price of such merchandise as bought and sold in usual wholesale quantities at the time of exportation to the United States, in the principal markets of the country whence imported, consuls will certify to invoices, the additional cost of transportation from the place of manufacture to the place of shipment. (So modified by executive order of June 1, 1907.)

**679. Certification when no consul of United States.** If there is no consular officer of the United States in the country from which the merchandise is imported, the certification required should be executed by a consul of a nation at the time in amity with the United States, if there is any such residing there; and if there is no such consul in the country, the certification should be made by two respectable merchants, if any there be residing in the port from which the merchandise is imported. R. S., sec. 2844.

**680. Invoice and declaration to be verified.** When the invoice and declaration are received by the consul, it is his duty to examine carefully each item and satisfy himself that it is true

and correct. In aid of this examination it shall be the duty of such consular officer to confer with official chambers of commerce and other trade organizations in his district, and he shall report any and all written communications from such commercial bodies and trade organizations that may be submitted to him in writing, together with all schedules of prices furnished him officially for that purpose; and the consul is authorized, in his discretion, to call for the bills of sale of merchandise purchased for export to the United States; to inquire into the cost of production of merchandise not obtained by purchase; to demand samples; and, if the conditions require it, to examine the entire consignment. Whenever an invoice is offered for certification which covers consolidated shipments consisting of the productions of different manufacturers, the consul may demand the submission of the manufacturers' bills relating thereto. Even when the merchandise has been purchased for export and the invoice sets out truly the price paid, the consul should ascertain whether the price represents the market value of the goods. The original bills are only to be requested in cases where invoices presented to the consular officer for authentication include goods of various kinds that have been purchased from different manufacturers at places more or less remote from the consulate and these bills shall be returned after inspection by the consular officer. (So modified by executive orders of March 1, 1906, and June 1, 1907.)

**681. Verification by oath.** Consular officers are authorized to require, before certifying any invoice, satisfactory evidence, either by the oath of the person presenting such invoice or otherwise, that it is correct and true. R. S., sec. 2862; S. 16381. In the exercise of this discretion consular officers are to be guided by the regulations or instructions established or given by the secretary of state.

The following general instructions touching the exercise of the discretion given to consular officers by section 2862 of the revised statutes have been issued by the secretary of state, and they are made a part of these regulations:

No oath shall be required for the verification of invoices of merchandise on the free list or subject to specific duty only.

The verification by oath of invoices of merchandise subject, expressly or in effect, to ad valorem duty may be required when the consular officer to whom the invoices are presented has reasonable ground to suspect fraudulent undervaluation or other willful misstatement therein, but shall not be required in any other case.

Any oath required pursuant to this regulation may be taken before any commissioner or other officer of good character and standing who is legally qualified to administer an oath, to which the local law attaches a penalty for false swearing.

Consular officers are prohibited from receiving the whole or any part of the fees charged by a commissioner or other officer for administering oaths to invoices; from receiving anything as a gratuity or otherwise on account of the administration of such oaths; and from being in any way, either directly or indirectly, pecuniarily interested in such fees. (See Circular, September 2, 1910.)

**683. Market value, how ascertained.** In order to ascertain the market value of any given article, it is important to inquire carefully as to the prices indicated in sales thereof for other markets than our own. When the United States are the only or principal consumers, and fictitious sales are created and nominal values suspected, consuls should ascertain the actual cost of production. Such cost of production includes cost of materials and of fabrication, all general expenses covering each, and every outlay of whatsoever nature incident to such production, together with the expense of preparing and putting up such merchandise ready for shipment, and an addition of 8 per cent upon the total cost as thus ascertained. 26 Stat. L., 136, sec. 11.

**684. Samples.** When the value of merchandise subject to ad valorem duty cannot be accurately determined by an inspection of the invoice, samples should be required of such as is of a nature to be sampled, particularly of textile and fibrous goods. Of textile and fibrous goods only type samples of each fabric which the exporter expects to ship during the following season, are required. These samples are to be delivered on or before the first season shipment. Samples of fancy goods should be not less than three by two inches. Samples of staple goods should be not less than four by three inches. These samples should be attached to cards or sheets and be filed in duplicate, one set to be retained at the consulate and one set to be forwarded to the appraiser at the port of entry. The quality, number, width, price per yard and ounces per running yard should be stated on the card to which the samples of woolen cloth are attached. The weight in ounces per square yard of woolen dress goods should be stated instead of the running yard. The data given with samples of cotton fabric should comprise quality, number, thread count, weight and width for full size of pattern or repeat and the price per yard.

Invoices covering shipments represented by type samples should contain for each item the proper type number for identification.

One sample should be retained at the consulate, one sent to the board of general appraisers at New York, and one sent directly to the appraiser at the port at which the merchandise is to be entered. When the merchandise is intended for immediate transportation, under the act of June 10, 1880, the samples should be sent to the chief customs officer at the port to which the merchandise is to be finally forwarded.

Samples of other merchandise, when in the judgment of the consular officer they are not too bulky, heavy, or fragile, should be forwarded to the appraiser at the port of entry. S. 15561.

Occasional samples of standard articles of uniform character and well known to the trade will be sufficient. Samples must when practicable be sent to the appraisers on their request.

All such samples, unless perishable, are treated by appraisers as official property, and are retained on file for at least six months from date of receipt. Consular officers should likewise carefully preserve them, together with the cards or statements to which they are attached. They are not open to inspection by any person not connected with the consular or customs service of the United States, except for the purpose of ascertaining or establishing market value or price, in which case the name of the shipper shall not be made known.

**685. Sample cards.** Samples should be accompanied by a certified statement or sample card, which should, when practicable, be attached to the sample to which the statement refers. For sample card generally used, see Form No. 147. A special form (No. 148) is given for woolen fabrics.

**686. Consular corrections.** If, on examination, any of the values stated in the invoice are found to be incorrect, or to be less than the true market value of the merchandise, the consul shall require the correct values to be given by the person producing the invoice, or he shall state the true value, as he conceives it to be, on a red-colored sheet to be attached to the first page of the invoice and designated as the "Page of Consular Corrections." (Form No. 115.) These blank pages will be issued in book form, serially numbered, and provided with perforated stubs, on which suitable memoranda of corrections made shall be noted by the consul. Even when the price of merchandise purchased for export is correctly stated, the consul shall note on the invoice any difference between the price paid and the actual market value.

**687. Explanation of corrections.** The consul should in general explain and justify his corrections noted on the invoice in a letter to the collector of customs at the port of entry, which letter may be either attached to the collector's copy of the invoice or sent separately. S. 12283. The appraisers are required to inform the consul as to what return of value has been made on any invoice upon which the consul has noted an opinion as to the value of the merchandise, and the consul is to be directly notified in all cases where invoice values are advanced on appraisal. S. 16867. (See Circular May 29, 1907.)

**688. Certification of invoices.** When the invoice has been found to be correct or has been duly corrected by means of the consul's notations, the consul shall indorse on each of the triplicate or quadruplicate invoices a certificate (Form No. 140), under his hand and seal (stamp signatures are not sufficient, S. 7045), to the effect that the invoice was produced to him, the date of such production, name of person producing it, the port in the United States at which it shall be entered, the declared intention to make entry of the merchandise, and also that he is satisfied the statements made in the invoice are true. R. S., sec. 1715, 2855. (See Circulars December 21, 1898, August 23, 1906, and September 16, 1908.)

**689. Numbering and indorsement.** Invoices must be consecutively numbered in the order in which they are certified. A new series of numbers must be begun each calendar year. Each copy of the invoice must be carefully folded in two folds, placing the number, port, and date on the outside. The amount of the invoice, its serial number, the name of the consulate, and the amount of the fee received for the certification should be stamped or written near the bottom of the first page at the left-hand corner of the invoice, and also upon the certificate. The copy filed in the consulate must show, also, the name of the owner or shipper and the name of the vessel. Every blank space in the forms should be filled with proper wording or by a dash with the pen to show that it has not been overlooked. (See Circular June 27, 1905.)

**690. Invoices fraudulently undervalued not to be certified.** Certification may be refused when the merchandise specified in the invoice appears to have been, or the consular officer has reason to believe that it has been, undervalued with fraudulent intent; but where the consul and the shipper honestly differ as to the true valuation, each should state his estimate of the value, and leave the determination of the true value to the appraising officers at the port of entry. R. S., sec. 1715; S. 11954, 15265, 15801. The consular officer is authorized to refuse to certify an invoice only when the evidence of fraudulent intent appears to him conclusive, as when the shipper refuses to comply with the requirements prescribed in these regulations. Whenever the consular officer is in doubt as to the good faith of the shipper, he may certify the invoice, taking the precaution to make adequate memoranda on the sheet provided for consular corrections and notations. S. 15801. (See Circulars July 20, 1900, April 30, July 1 and August 26, 1901, October 11, 1902 and April 8, 1903.)

**691. Certification after shipment.** In exceptional cases where the production of the invoice at or before the shipment of the merchandise is shown to have been impracticable, an invoice produced after shipment may be certified upon satisfactory evidence that it is true and correct. In such case the reasons for production and certification after shipment should be indorsed on the invoice. Greater leniency in enforcing this requirement is permissible in the shipment of perishable merchandise requiring quick handling than in other cases. On the other hand, the consul may refuse to certify the invoice before the merchandise has been actually shipped, in cases where the good faith of the shipper appears to him to be doubtful. S. 15604.

**Replace invoices.** After an invoice has been certified and the merchandise shipped the consul should, as a general rule, decline to certify a substitute or "replace" invoice advancing the values, or otherwise materially changing the original statement. Invoices may sometimes, through inadvertence or ignorance of the law, be prepared so faultily as to justify correction in a substituted invoice; but such substitutions have been so frequently made to evade the

penalty of an attempted undervaluation that they will be permitted only when the clearest evidence is produced of the unavoidable nature of the errors alleged to have occurred in the original invoice, and when it is positively shown that no premeditated evasion of the revenue laws has been involved in the proceeding. S. 17295.

**692. Currency certificates.** The price of merchandise obtained by purchase must be stated in the currency actually paid therefor; and when the currency paid for purchased merchandise is depreciated, a currency certificate (Form No. 144) must be attached to the invoice showing the percentage of depreciation as compared with the corresponding standard coin currency and the value in such standard coin currency of the total amount of the depreciated currency paid for merchandise included in the invoice. R. S. sec. 2903; S. 14287, 17252. This certificate should show, not the value of the depreciated currency in money of account of the United States, but its value in the terms of the standard coin currency in comparison with which the currency used in the purchase is depreciated. S. 11314, 12399, 14107, 17170.

In the assessment of duty the currency of the invoice is reduced to the money of account of the United States upon the basis of the values of foreign coins at the date of shipment, as proclaimed by the secretary of the treasury for the first day of January, April, July and October of each year. Tariff of 1894, sec. 25; S. 16921. The date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation. Tariff of 1894, sec. 25. In the absence of a currency certificate no allowance will be made for depreciated currency. S. 15435.

When an invoice is certified by a consul of a nation at the time in amity with the United States, or by two respectable merchants, as provided by section 2844 R. S., the currency certificate required by section 2903 R. S., may be issued by the foreign consul or the two respectable merchants who certify the invoice.

For statistical purposes currency certificates are required for all invoices of merchandise purchased and paid for in depreciated currency, without regard to the dutiable or non-dutiable character of the merchandise. S. 14287.

**693. Disposition of invoices.** The consular officer is required to designate by stamp or otherwise the original, duplicate, triplicate, and (when there is one) quadruplicate of each invoice. The original must be filed for preservation in the consular office, the duplicate delivered to the person producing the invoice, or, upon his request, to the agents of the vessel in which the merchandise is to be exported to the United States, and the triplicate sent promptly, by the master of the vessel conveying the merchandise, or by mail, and without the intervention of any party in interest, to the collector of customs of the port at which the merchandise is to be finally entered. S. 15936. When the merchandise is to be entered under the immediate-transportation act (paragraph 662), the quadruplicate copy of the invoice required by that act must be delivered, with the duplicate, to the person producing the invoice.

The triplicate or collector's copy of the invoice should always be transmitted, carefully addressed, in the most direct and speedy manner possible, so that it will reach the customhouse before the entry of the merchandise. It is never to be sent through the office of the consul-general.

All the triplicate invoices to be forwarded to the same collector by the same mail or vessel should be placed in an envelope, with a letter in form No. 142, carefully addressed to the collector and stamped with the name of the consulate and the date. The blank for the number of invoice must be filled in writing. A small silk cord or narrow ribbon must then be passed through the envelope, near the end and sides, and under the consular seal, with which the envelope must be carefully sealed. The postage must be prepaid. When the collector's invoice is sent by the master of the vessel which carries the merchandise, a receipt (Form No. 141) must be taken from the master and filed in the consular office. (See Circulars, March 2, 1903, October 5, 1905 and November 17, 1910.)

**694. Descriptive lists.** When invoices are transmitted from a consulate or place of purchase or manufacture in the interior to the consul at the port of shipment designated in the invoice, to be thence forwarded to the proper collector, the package must be accompanied by a descriptive list (Form No. 143), to facilitate comparison with the shipper's manifest, before taking the master's receipt as per forms Nos. 141 and 143. The consul at the port of shipment must see that the integrity of the package is duly secured in the manner prescribed in the preceding paragraph. (See Circulars February 12, 1908 and June 21, 1909.)

**695. Fee for certification.** An official fee of \$ 2.50 has been prescribed for the consular certificate to the invoice required by law for entering imported merchandise. R. S., secs. 1716, 2851. This fee pays for the certified invoice in triplicate or quadruplicate, as the case may be, for the certificate of cost (paragraph 674), for the currency certificate (paragraph 692), and for any other authentication required in the entry of the merchandise.

**696. Fees for copies and for extra and transit invoices.** Fees collected for copies of invoices, or for extra invoices certified as originals, are official. 133 U. S., 273. Fees for certified invoices to accompany merchandise shipped for transit through the United States to a foreign country are likewise official. (Paragraph 533.) (See Circulars July 9, 1907 and July 31, 1909.)

**697. Copies and prices current for collectors.** Consuls are required, on request of the proper collectors of customs, to supply them, free of charge, with copies of invoices or with other documents on file in the consular office which are needed by the customs officers in the dis-

charge of their duties. They are also required to furnish the secretary of the treasury, the board of general appraisers, or such other officers as the secretary of the treasury may designate, with the prices current of the merchandise usually exported to the United States from their respective consular districts. R. S., see. 1713. (Paragraph 600.)

**698. To explain the customs laws and regulations to exporters.** Consular officers are enjoined to explain to exporters in their districts the scope and purpose of the customs laws and regulations of the United States, and to take all proper measures for obtaining information needed by the customs officers. (See Circular September 21, 1905.)

**699. Retaliatory tariff provisions.** The duty imposed by paragraphs 166, 182<sup>1</sup>, 185, 568, 591, 643, and 683 of the tariff act of 1894, depends on the existence or the non-existence of certain specified conditions affecting the merchandise mentioned therein in the country of export. Consular officers are requested to note on invoices of merchandise subject to these variable duties the existence of any law or fact in the country of export which would call into operation the respective provisos in the said paragraphs and warrant the collection of the alternative duty. (See paragraphs 476 and 687 of Tariff Act of 1909.)

### Sealing of Cars entering the United States from Canada.

**700.** To avoid inspection at the frontier port or place of arrival in the United States of any car coming from contiguous territory in the Dominion of Canada which is capable of being properly closed and securely fastened and which is laden with merchandise destined for a port of entry or of delivery under the immediate-transportation act (paragraph 655), in the United States by a continuous railway route, the owner of such merchandise, or his agent, or the conductor of such car, is required to make application to a consular officer of the United States residing in such foreign territory to close and seal said car, and also to prepare and present to such consular officer a manifest (Form No. 146) in quintuplicate containing a full and correct description of the merchandise, the marks and numbers on the packages, the dutiable value of each package, description and number of the car, and name of the railroad company to which it belongs. R. S., secs. 3102, 3103; Cust. Reg., arts. 457, 458; S. 3025, 11433, 12406. (See Customs Regulations, Articles 425, 434, 445 and 453.)

**701.** On receipt of such manifest in quintuplicate as aforesaid, the consular officer of the United States will, after a careful comparison of the contents of the car with the manifest, duly close and seal the openings of the car, and will thereupon, after placing a serial number on the manifest, retain one copy thereof for the files of his office, transmit one copy immediately by the conductor of such car, in a sealed envelope, to the principal customs officer at the frontier port or place of first arrival in the United States, transmit another copy by mail to the collector at the port of destination, deliver the fourth copy to the owner, agent, or conductor to accompany the car, and transmit the fifth copy directly to the auditor for the treasury department. Cust. Reg., art. 458; S. 11433.

**702.** Before sealing the cars their contents should be examined and compared as to marks and numbers of the packages with the manifests presented for the consul's official signature; and the cars should be closed and sealed before the manifests are forwarded to their destination or delivered to the conductors of the trains. No car should be sealed if containing merchandise destined to more than one port, as it is contemplated that the car shall be opened only at one port of entry or of delivery and its entire contents taken out there. In no instance should this duty be intrusted to an unofficial person.

### Documentation of Merchandise for free Entry.

**703.** The tariff act of 1894, provides for the admission of certain articles of foreign growth or production free of duty, under regulations to be prescribed by the secretary of the treasury. In some cases the co-operation of consuls is provided for in the treasury regulations, and these cases are given below. (See Tariff Act of 1909 and Customs Regulations.)

**704. Animals for breeding purposes.** The act provides that any animal imported specially for breeding purposes shall be admitted free: Provided, That no such animal shall be admitted free unless pure bred of a recognized breed and duly registered in the book of record established for that breed, and the secretary of the treasury may prescribe such additional regulations as may be required for the strict enforcement of this provision. Tariff of 1894, par. 373. (See Tariff 1909, par. 492.)

**705.** The treasury regulations direct that no animal imported for breeding purposes shall be admitted free of duty unless the importer furnishes a certificate of the record and pedigree (Form No. 186), showing that the animal is pure bred of a recognized breed, and has been admitted to full registry in a book of record established for that breed, and that its sire and dam and grandsires and granddams were all recorded in a book of record established for the same breed. For list of the books of record, see Appendix V. An affidavit (Form No. 187) by the owner, agent, or importer that such animal is the identical animal described in said certificate of record and pedigree must be presented. This affidavit, when made at the port of exportation, must be made before the consular officer of the United States. In the case of sheep females, are frequently recorded by flocks, and not individually; therefore, whenever the aforesaid requirement as to pedigree can not be complied with, the animal will be admitted on the certificate of the secretary of one of the recognized associations named in the circular to the effect that it is pure bred and has been registered in the flock book of that association. S. 15589, 16462.



Unless the certificate of record and pedigree be produced, the animal will be considered as not being pure bred of a recognized breed and duly registered in the book of record established for that breed, and the duty will be assessed accordingly. S. 11274, 15539, 15922, 16108. (See Tariff 1909 and Customs Regulations and Circulars of April 25, 1904, December 15, 1905, June 3 and August 1, 1908.)

**706. Immigrants' teams and effects.** Teams of animals, including their harness and tackle, and the wagons or other vehicles actually owned by persons emigrating from foreign countries to the United States with their families, and in actual use for the purpose of such emigration, are admitted free under such regulations as the secretary of the treasury may prescribe. The team of an unmarried immigrant used in conveying personal effects and tools of trade from a foreign country to the United States may be admitted free of duty. Horses intended for racing purposes in the United States can not be admitted to free entry as the team of an immigrant, although used by an immigrant in the act of immigrating. Horses of immigrants used for the transportation of themselves and luggage to a railway station and thence shipped to the United States, where they are again used by the immigrants to reach their destination, are to be considered in actual use for the purpose of immigration; but horses and harness purchased abroad and brought to the United States in cars as freight are not within the terms of the act. Tariff of 1894, par. 174; S. 11178, 12624, 12956, 16589. (See Circulars January 6, and July 10, 1900, January 23, 1903 and April 23, 1907, Tariff of 1909, par. 493, and articles 599—591 Customs Regulations.)

**707.** To entitle to free entry teams of animals, including their harness, and the wagons or other vehicles drawn by such teams, and the customary articles used in connection therewith, when brought into the United States by bona fide immigrants, the immigrant must make declaration before the United States consular officer or the collector, at the option of the immigrant, stating the number and kind of animals and articles, that they are owned by the affiant and are being used for the purpose of immigration and are not intended for sale, and that the same have been in actual use by him abroad. (Form No. 128.)

**708. Natural mineral waters.** Mineral waters, all not artificial, and mineral salts of the same obtained by evaporation, when accompanied by duly authenticated certificates showing that they are in no way artificially prepared and are the product of a designated mineral spring; lemonade, soda water, and all similar waters are exempt from duty. Tariff of 1894, par. 555. Natural mineral water artificially charged with gas from the same or an adjacent spring, to compensate for loss of same in bottling, is entitled to free entry. S. 5115, 16249, 16845. The certificate required should be separate and distinct from the invoice and invoice certificate, and should embrace the oath or declaration of the owner or manager of the spring, authenticated under the certificate of the consular officer of the United States. S. 15503, 16587. (Form No. 156. See par. 627, Tariff 1909.)

**709. Paintings and statuary.** Paintings, in oil or water colors, original drawings and sketches, and artists' proofs of etchings and engravings, and statuary, not otherwise provided for in the tariff act, are exempt from duty; but the term "statuary" as therein used includes only professional productions, whether statuary or sculpture, and the word "painting" does not include such as are made wholly or in part by stenciling or other mechanical process. Tariff of 1894, par. 575. The professional productions of a statuary or sculptor are such works of art as are the result of the artist's own creation or copies of them or of works of other artists, made under his direction and supervision. S. 9744, 11394; 108 U. S., 312; 132 U. S., 167. The most direct and satisfactory, but not the only, evidence that the statue is the professional production of a statuary or sculptor is the declaration (Form No. 127) of the sculptor himself, certified by the consular officer. S. 11394, 15283, 15428, 15821, 16377. (See par. 717, Tariff 1909, Circular August 27, 1909, and Treasury Decision 31069.)

**710.** There is no requirement that the paintings provided for in the foregoing paragraph should be the production of professional artists, rising to the dignity of works of art, or should be accompanied by artists' certificates; but they must have been produced by hand and not by stenciling or other mechanical process. S. 9161, 15292.

Paintings on porcelain in mineral colors, vitrified by firing, are not exempt from duty under paragraph 575 of the tariff act, and articles primarily designed for a useful purpose, but made the groundwork of artistic painting to please the eye and gratify the taste, are not paintings within the meaning of that paragraph, although the painting imparts to them their chief value from a pecuniary point of view. Paintings on clocks, curtains, gas fixtures, porcelain plaques and other similar ware, tiles, glass windows, table covers, doilies, etc., do not entitle those articles to free entry under this paragraph, although they may be so entitled under paragraph 686 of the act. (Paragraph 711.) The painting must be designed solely for ornamental purposes, and the groundwork may be anything not designed to fulfill a useful purpose apart from the painting upon it. S. 15178, 15413, 15831, 15952, 16422, 16429, 16430, 16712.

**711.** Works of art, the production of American artists residing temporarily abroad, or other works of art, including pictorial paintings on glass, imported expressly for presentation to a national institution, or to any state or municipal corporation, or incorporated religious society, college, or other public institution, including stained or painted window glass or stained or painted glass windows, are exempt from duty; but such exemption shall be subject to such regulations as the secretary of the treasury may prescribe. Tariff of 1894, par. 686; S. 15540. (See par. 16 Tariff 1909.)



For the free entry of any work of art, the production of an American artist residing temporarily abroad, it is requisite that the article shall be positively identified as such production by means of the declaration (Form No. 155) of the producer or of witnesses of such production, and such other evidence as may be needed to establish the facts to the satisfaction of the collector of customs. Cust. Reg. art. 352. (See Customs Regulations 722 and Treasury Decision 22363.)

### Returned American Merchandise.

**712.** Articles the growth, produce, and manufacture of the United States, when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means; casks, barrels, earboys, bags, and other vessels of American manufacture exported filled with American products, or exported empty and returned filled with foreign products, including shooks when returned as barrels or boxes; also quicksilver flasks or bottles, of either domestic or foreign manufacture, which have been actually exported from the United States, are exempt from duty; but proof of the identity of such articles must be made under general regulations to be prescribed by the secretary of the treasury. Tariff of 1894, par. 387. (See Section 500, Tariff 1909.)

**713.** To guard against fraud and to insure identity, the treasury regulations require, in addition to proof of exportation, the production of a declaration (Form No. 129), made by the foreign exporter of the merchandise before the consul, of the fact that the merchandise was imported from the United States and that it has not been advanced in value or improved in condition by any process of manufacture or other means. But if it be impracticable to produce such declaration at the time of making entry, bond may be given for the production thereof. S. 14653, 15063, 16794 (Paragraph 657).

**714. Shooks of American manufacture.** Consular officers are required to keep a debit and credit account or record of shooks, claimed to be of American manufacture, imported into or exported from their districts, and to grant certificates (Form No. 130) under seal for such of the shooks as are covered by certificates under seal from customs officers in the United States, showing the merchandise to be of domestic manufacture exported for return as boxes or barrels. Cust. Reg. 1892, art. 337. (See Customs Regulations 1908, art. 585 and Circulars, May 10, 1904 and March 10, 1905.)

To the end that consuls may have the requisite information upon which to base their certificates, collectors of customs have been instructed to forward, on the shipment of such shooks to foreign ports, declared to be intended for reimportation, to the proper consul, at the expense of the shippers, a certificate showing that such exportation has been made. Cust. Reg. 1892, art. 337. (See Customs Regulations 1908, art. 585.)

Whenever a shipment of boxes or barrels is made from a consular district other than that into which the shooks were imported, the consul in the former district must require the production from the consul in the latter district of the required certificate of importation, and the latter will make the required record of exportation. (See Customs Regulations 1908, art. 587.)

**715. Orange and lemon boxes.** Thin wood, so called, comprising the sides, tops, and bottoms of orange and lemon boxes of the growth and manufacture of the United States, exported as orange and lemon box shooks, may be reimported in completed form, filled with oranges and lemons, by the payment of duty at one-half the rate imposed on similar boxes of entirely foreign growth and manufacture. Tariff of 1894, par. 216. (See Tariff 1909, par. 211.)

The effect of this provision is to impose a duty of 15 per cent ad valorem on orange and lemon boxes made in part (sides, tops, and bottoms, the ends being of foreign material) of thin wood of the growth and manufacture of the United States, and to exclude such boxes from the benefit of paragraph 387 of the tariff act, which, being generic in its terms, would otherwise entitle them to admission free of duty. S. 15563, 15674, 15850, 16009, 16473, 17904.

**716.** The regulations for the documentation of boxes and barrels made of American shooks (paragraph 714) are to be applied as far as may be to orange and lemon boxes the sides, tops, and bottoms of which are made of thin wood of the growth and manufacture of the United States.

The affidavit of the foreign shipper (Form No. 130) may be modified to agree with the facts in the shipment of boxes not wholly made of shooks the product of the United States, and the certificate of the consul may be modified to agree with the facts of each case.

Thin wood exported for the purpose of being used in the construction of orange and lemon boxes is required to be specially designated in the outward manifest on exportation from the United States as "orange and lemon box shooks." They must be entered in the consular record required by paragraph 714 as "orange and lemon box shooks," and the certificate of the consul must show that the exportation back to the United States includes this class of shooks and no other.

**717. Products of American fisheries.** Paragraph 568 of the tariff act of 1894, provides for the admission free of duty of spermaeeti, whale, and other fish oils of American fisheries, and all fish and other products of such fisheries. (See par. 639 Tariff 1909.)

Fish, oil, bone, pearl shells, and other products of American fisheries brought into the United States from foreign places in a vessel other than the one by which the same were taken will be admitted to free entry as if brought in the original fishing vessel on the production to the collector of customs at the port of importation by the master of the importing vessel of a manifest of said articles (Form No. 157) duly subscribed and sworn to by the master of the fishing vessel by which said articles were taken, and certified by the consular officer of the United

States at the foreign port where they were transshipped; or, if there be no such officer at the place, it must be certified by two respectable resident merchants that the facts set forth in the manifest are just and true, and that there is no consular officer of the United States at the place. (Form No. 158.) S. 10358, 10362, 10391, 10438, 10650, 11300, 11604, 11680, 11709, 11846, 12622, 12623, 13613, 13614, 15479, 15662, 15679, 15735, 16721. (See Treasury Decision 31223.)

**718. Product of American fisheries in the Pacific.** Articles which are the product of American fisheries in the Pacific may be landed from the fishing vessel at Panama and transported across the Isthmus of Panama, and shipped to a port of the United States, on the Atlantic or Gulf of Mexico, and be admitted to free entry on due compliance with these regulations.

The consul of the United States at Panama, or the revenue inspector, will examine the packages and compare them with the manifest, and certify thereon the result under his hand and official seal, stating in his certificate that the articles so manifested were placed, under his inspection, on the cars or other vehicles for transportation to the port or place of shipment on the Atlantic side. (See art. 682, Customs Regulations 1908.)

On arrival of the articles at the Atlantic terminus of the route, the manifest aforesaid must be presented to the consul of the United States at Colon, or to the revenue inspector, who will certify thereon to the due shipment of same under his inspection.

**719. Marks of country of origin.** All articles of foreign manufacture, such as are usually or ordinarily marked, stamped, branded, or labeled, and all packages containing such or other imported articles, are required to be plainly marked, stamped, branded, or labeled in legible English words before importation, so as to indicate the country of their origin and the quantity of their contents; and until so marked, stamped, branded, or labeled they will not be delivered to the importer. Should any article of imported merchandise be marked, stamped, branded, or labeled so as to indicate a quantity, number, or measurement in excess of or less than the quantity, number, or measurement actually contained in such article, no delivery of the same will be made to the importer until the mark, stamp, brand, or label has been changed so as to conform to the facts of the case. Tariff of 1894, sec. 5. This provision applies to merchandise of foreign manufacture only, and not to merchandise produced otherwise than by a manufacturing process. S. 15441, 15484. Its application is also limited to such articles of foreign manufacture as are usually or originally marked, stamped, branded, or labeled; but all packages, outer and inner, containing such imported merchandise, whether dutiable or free, and whether imported for sale or for the importer's own use, must be marked, stamped, branded, or labeled as the statute directs. S. 16402. (See sec. 7, Tariff 1909, Customs Regulations, Ch. IV, and Circulars, December 30, 1909, April 25, June 21 and July 7, 1910.)

**720.** The indication of the country of origin need not necessarily be restricted to the declaration of the name of such country, but may be accepted under whatever form, provided the merchandise contains unmistakable evidence of its origin, without misleading marks or signs. The marking should be legible, durable, and so located that there will be no difficulty in seeing it. S. 11115, 11749, 15248, 15250, 16156, 16238, 16257, 16374, 16608.

Where the article was ordinarily stamped at the time of the passage of the act, the country of origin should be indicated by stamp thereon; if branded, the country should be indicated by brand thereon; or if labeled, the country should be indicated by label thereon; and if marked in any other way, the country should be similarly shown. S. 10832, 15279, 15371, 16147.

The requirement that the marking of the merchandise shall show the quantity of the contents is satisfied when the packages which contain such articles as are usually marked, stamped, branded, or labeled duly indicate the quantity of their contents. S. 15248, 15279. Each package must accordingly show the number of pieces contained in it and the weight thereof, gross and net. S. 15248.

The marking of articles of cutlery should be of such a character that it can not be removed unless ground out on a grindstone; it should be quite as legible as the proprietary marks, and so located that there will be no difficulty in seeing it. The marking of bags should be made indelible, in order to avoid obliteration by moisture and handling. S. 16147, 16187, 16190, 16238.

**721.** Champagnes, mineral waters, etc., in labeled bottles may be admitted if the outside packages are marked with the name of the country of origin.

The marking of the inside cartons and outside packages of small articles which can not themselves be readily marked will be sufficient.

Sheets of zinc, tin plate, and similar articles, which are not usually stamped, except to indicate gauge, etc., may be admitted to entry if the packages are marked, stamped, etc.

In the instance of filled imported bottles, the law will be complied with if one label thereon bears the name of the country of origin.

The country of origin, and not the locality of manufacture, must be shown; and abbreviations which are sufficiently definite may be accepted.

Fire brick and like articles imported in bulk need not be marked.

In the case of articles which are usually packed in cartons or bands, it will suffice if the inside and outside packages are marked with the name of the country of origin.

Packages containing beer manufactured in Germany, of German malt and Austrian hops, should be marked "Germany," as indicating the country of origin of the article.

The law does not contemplate the marking of coverings of crude or other substances of a moist or deliquescent nature; for example, certain kinds of sugar in mats, etc., where permanent marking would be impracticable.

Articles usually imported in bulk, when secured together for convenience in handling, are not considered packages requiring to be marked.

Books, newspapers, pamphlets, maps, charts, engravings, sheet music, and other printed matter are not articles such as are "usually or ordinarily marked."

Merchandise intended for immediate export or for transit through the United States to Mexico or Canada does not come within the purview of the laws as to marking, stamping, branding, etc.

Men's, women's, and children's garments, except hosiery and underwear, are not such articles as "are usually and ordinarily marked, stamped, branded, or labeled;" but the packages, wrappers, cartons, or coverings containing such articles must be marked in accordance with law. (See Circulars January 20, 1900, *re*-seal-skin garments, February 25, 1904, *re*-sardines, June 20 and October 7, 1903, August 29, 1904, March 21, 1905, January 26, 1907, February 10, April 15 and May 14, 1908, July 13 and December 19, 1910, *re*-food products.)

**722. Convict-made merchandise.** The entry at any port of the United States of goods, wares, articles, and merchandise manufactured wholly or in part in any foreign country by convict labor is prohibited; and consular officers are instructed to note on the collector's copy of an invoice of merchandise known or reasonably suspected to be the product of convict labor the fact of such production or the reasons for suspecting it, or to give the information to the collector in a separate communication. Tariff of 1894, sec. 24; S. 12300.

Shippers who are known to employ convict labor or to handle convict-made merchandise may be required to make oath before a competent local official regarding the origin of their shipments, and the consul may refuse to certify any invoice covering merchandise suspected to be made by convict labor until the exporter shall have made oath to the effect that no part thereof was manufactured wholly or partially by convict labor; provided that a copy of the rejected invoice shall be sent to the collector of customs at the port of intended entry in the United States, with a statement of the consul's reasons for rejecting it, if it was refused. S. 11649, 11934, 14353.

### Landing Certificates.

**723.** Bonds given for the exportation of merchandise from the United States to a foreign country are canceled on the presentation of a verified or authenticated landing certificate which shows that the merchandise has been delivered at its foreign destination. Exportations under bond may be made for the purpose of avoiding the actual payment of duty or of internal-revenue tax, or they may be made under the laws providing for the transportation of merchandise from one foreign country to another foreign country in transit through the United States. (See Circular August 13, 1907.)

**724.** To cancel bonds given for payment of duty or of internal-revenue tax. All bonds given to cover the exportation of any merchandise from the United States, and on which any drawback of duties or allowance is payable by reason of such exportation, may be discharged by production within one year from the date thereof, if the exportation has been made to any port of Europe or America, or within two years if made to any port of Asia or Africa, of: 1. A certificate (Form No. 150) under the hand of the consignee at the foreign port to whom the merchandise shall have been addressed, therein particularly setting forth and describing the articles so exported, their marks, numbers, description of packages, the number thereof, and their actual contents, and declaring that the same have been received by him from on board the vessel, specifying the names of the master and vessel from which they were so received; and where such merchandise is not consigned or addressed to any particular person at the foreign port to which the vessel is destined or arrives, but where the master or other person on board such vessel is the consignee of such merchandise, a certificate from the person to whom such merchandise has been sold or delivered by such master or other person shall be produced, to the same effect as that required if the person receiving the same had been originally intended to be the consignee thereof. R. S., sec. 3044. In cases of shipment of tobacco or snuff in bond under section 24 of the act of February 8, 1875, Form No. 183 should be followed. 18 Stat. L., 312; 2. A certificate (Form No. 151) under the hand and seal of the consul or agent of the United States, residing at the place, declaring either that the facts stated in the certificate of such consignee, or other person, are to his knowledge true, or that such certificate is deserving of full faith and credit. R. S., sec. 3045; 3. The oath (Form No. 153) of the master and mate, if living, or, in case of their death, the oath of the two principal surviving officers of the vessel in which the exportation shall be made, confirming the certificates of the consignee and consul. R. S., sec. 3045; 4. Where there is no consul or agent of the United States residing at the place of landing, the certificate of the consignee or other person hereinbefore required shall be confirmed by the certificate (Form No. 152) of two reputable American merchants residing at the place, or if there are no such American merchants, then by the certificate of two reputable foreign merchants, testifying that the several facts stated in such consignee's or other person's certificate are, to their knowledge, just and true, or that such certificate is, in their opinion, worthy of full faith and credit; and such certificate shall also be supported by the oath of the master and mate or other principal officers of the vessel, in the manner before prescribed.

The oath of the master and mate or other principal officers shall, in all cases, when taken at a foreign port, be taken and subscribed before the consul or consular agent of the United States residing at such foreign port, if any such consul or agent reside thereat. R. S., sec. 3045.

**725. Where affidavit of master and mate not procurable.** In cases where it is impossible to obtain the affidavit of the master and mate or the principal officers of the vessel in which the exportation has been made, the declaration of the consignees may be confirmed by a certificate (Form No. 154) from the custom-house at the foreign port showing landing and entry of the merchandise. S. 14568.

In view of the difficulty often experienced in obtaining the oath of the master and mate to landing certificates covering articles exported from the United States by steamship lines, collectors of customs are hereby authorized, in all cases of exportation under internal-revenue laws, where the articles are exported by steam vessels belonging to or chartered by any steamship line having an agent at the foreign port of landing, to accept, in lieu of the prescribed oath of the master and mate, the sworn statement of such foreign agent. The statement of the agent in such cases must be substantially in the form heretofore prescribed for the master and mate of the exporting vessel (Form No. 153) and must be sworn to before a United States consul or some foreign revenue officer having a seal. This provision applies only to cases of exportation under the internal-revenue laws. Exportations under sections 3044 and 3045, Revised Statutes, must be verified as prescribed in paragraph 724. S. 13719, 14268, 14568.

**726. Consolidation of landing certificates.** The consignee may be the agent to receive the merchandise and distribute it among several ultimate consignees; and several lots of merchandise shipped on separate bills of lading and at different times, but entered at the foreign custom-house at the same time by one consignee who is the holder of all the bills of lading, may be embraced in one landing certificate executed by the holder of the bills of lading; but if the bills of lading show different consignees, a landing certificate is required from each consignee. Consolidation of shipments after arrival of the merchandise in the foreign port by the act of the several consignees in empowering one of their number to act for all in entering the merchandise and making the consignee's certificate is not permitted. S. 11669, 12747, 14775, 14903, 14968.

These rules have been relaxed in favor of shipments of less than \$ 100 in value by land to Canada and Mexico, so that one landing certificate may be made to cover any number of such shipments by the same exporter to the same destination. S. 14209, 14777.

When merchandise exported with benefit of drawback is landed at one foreign port for entry and transportation to an ulterior foreign port, the landing certificate must be executed at the port of first arrival by the consignee who makes the entry for transportation beyond.

These forms are specially adapted to the export of distilled spirits, but the same proof of landing in a foreign country is required to cancel a bond given for the exportation of domestic tobacco, snuff, and cigars under the internal-revenue laws. Cust. Reg., art. 664.

**727. General directions.** Landing certificates must be signed by the consignee abroad. In all cases where practicable the signature of the principal should be affixed to the document before or at the time of its presentation for the consular certificate; in no case should the signature of an agent be accepted unless absolute and legal proof of his authority is produced. (See Circular August 13, 1907.)

Consular numbers for landing certificates should be commenced on the 1st of January in each year and continued consecutively during the entire calendar year. The number should be written or stamped plainly at the left-hand upper corner on the face of the certificate.

When fees for landing certificates are reported (paragraph 568), the numbers placed on each certificate should appear upon the return of fees, as in the case of invoices.

A register of landing certificates (Form No. 134) is required to be kept by consular officers in a book furnished for the purpose.

**728. For merchandise in transit to Canada and Mexico from foreign countries.** Section 3005 of the Revised Statutes provides that all merchandise arriving at certain ports and destined for places in the adjacent British provinces or in the Republic of Mexico may be entered at a custom-house and conveyed in transit through the territory of the United States without payment of duties, under such regulations as the secretary of the treasury may prescribe.

Bonds for merchandise exported to Canada under this law may be canceled under the treasury regulations, on receipt of a certificate of inspection and exportation made by the collector of customs of the United States at the frontier port and a certificate of landing in Canada by the collector at the Canadian port of entry, without consular verification. Cust. Reg., arts. 437, 438.

For the cancellation of the bond for merchandise in transit to Mexico under section 3005 of the Revised Statutes the exporter is required to produce, in addition to the certificate of inspection and exportation of the collector at the frontier port, a landing certificate (Form No. 184) of the foreign consignee or a certificate of entry from a Mexican customs officer, verified by a consular officer of the United States (Form No. 185).

The holder at a foreign port of a bill of lading issued to him by the common carrier may properly be considered as the consignee authorized to execute the landing certificate. S. 10708.

# Index.

## A

- ACTIONS:  
by and against corporations generally, 74—76.  
by and against foreign corporations, 108—113.
- ALABAMA:  
foreign corporations in, 534—537.
- ALASKA:  
foreign corporations in, 537, 538.
- ANTI-TRUST LAWS: *see* TRUSTS.
- ARIZONA:  
foreign corporations in, 539.
- ARKANSAS:  
foreign corporations in, 539—541.
- ARTICLES OF INCORPORATION, 13—16.  
contents generally, 13, 14.  
corporate duration, 14.  
name, 14.  
purpose, 15.  
first directors, 15.  
place of business, 14.  
provisions as to capital, 15, 16.  
signing and recording, 16.  
unlawful purpose, 15.

## B

- BILL OF SALE:  
of ship, recording, 629.
- BONDS, CORPORATION:  
coupons for interest, 89.  
enforcement of, 91, 92.  
issue of, 87, 88.  
maturity, 90.  
negotiability, 88.  
priorities, 92.  
receiver, 92.  
transfer, 89.
- BY-LAWS, 22, 23.

## C

- CALIFORNIA: CORPORATIONS:  
articles of incorporation, 125, 126.  
assessments of stock, 136—138.  
acquisition of real property, 141.  
amendment of articles of incorporation, 141.  
banking corporation may elect to have capital stock, 128.  
bonds, lost or destroyed, 135.  
books of banking corporations, 132.  
by-laws, 128, 129.  
bonded indebtedness, increase and reduction of, 139—141.  
change of name, 128.  
calls, 136—138.  
certificate of incorporation, 127.  
certificates for stock, 133, 134.  
corporate powers, 138—144.  
capital, increase and reduction of, 130, 139—141.  
co-operative corporations and associations, 147—149.  
consolidation of co-operative associations, 149.  
change of principal place of business, 132.  
change of name, 150.  
combinations to obstruct sale of live stock, 602, 603.  
definitions, 124.  
directors, 128—130.  
misconduct by, 151, 152.  
dissolution, 144.

CALIFORNIA: CORPORATIONS—*continued*

- dissolution of co-operative associations, 149.
- dividends, 130.
- examination into affairs of corporation, 144.
- elections, 130, 131.
- erroneous filing of articles, correction of, 112.
- execution against corporate property, 144.
- extension of corporate existence, 145.
- execution against co-operative associations, 148.
- filing of articles of incorporation, 127.
- false reports, 152.
- formation, 125 *et seq.*
- fraudulent insolvency and frauds in management, 151, 152.
- foreign corporations, 145—147.
- liability of stockholders, 133.
- lost or destroyed records, 142, 143.
- meetings, 131, 132.
- public and private corporations, 124.
- prerequisites to filing articles, 126, 127.
- prospectus, unauthorised use of names in, 151.
- provisions of the Constitution, 122—124.
- records, 142, 143.
- sale of property under execution, 144.
- sale, lease or transfer of business, 141, 142.
- stock, stockholders, 133—138.
- transfer of shares, 134.
- trade disputes, combinations in, 603.
- trusts, 603—606.
- voluntary dissolution, 149, 150.
- word "trust" not to be used in corporate name unless authorised, 126.

## CALLS ON SHARES, 35, 36.

## CANAL ZONE: CORPORATIONS:

- limitations; attachment, 154.
- receiver, 153.

CAPITAL: *see* CORPORATION.

- increase of, 45—47.
- reduction of, 47, 48.

## CATTLE, IMPORTATION OF, 630, 639, 640.

CERTIFICATE OF SHARES: *see* SHARES.

## CERTIFICATION OF INVOICES, 635—638.

CHARTER: *see* CORPORATION.

## COLORADO:

- foreign corporations, 541—544.

## COLUMBIA:

- foreign corporations, 544.
- trusts, 599.

## COMBINATIONS, UNLAWFUL:

- Alabama, 534.
- California, 602—604.
- federal statutes, 598—602.
- Illinois, 606—608.
- New York, 609, 610.
- Wisconsin, 525, 533.

COMMERCIAL CORPORATIONS: *see* CORPORATION.COMMERCIAL TREATIES: *see* TREATIES.COMPANY: *see* CORPORATION.

## COMPETITION:

- restraint of: *see* TRUSTS.

## CONNECTICUT: CORPORATIONS, 154—174.

- acquisition of own stock, 156.
- annual reports and returns, 161, 162, 171.
- alteration of charter, 163.
- Act of 1901 . . 165—169.
- amendment of certificate of incorporation, 167.
- causing insolvency by reducing stock, 155.
- corporations under special charters, 163—165.
- certificate of incorporation, 166, 167.
- consolidation, 168.
- corporations without capital stock, 170, 171.
- dissolution of, 172, 173.

CONNECTICUT: CORPORATIONS—*continued*

dissolution, 160, 161, 172, 173.  
 dividends restricted, 154.  
 directors, 155.  
 formation under Act of 1901 .. 166.  
 foreign corporations, 169, 170.  
 investment companies, 162, 163.  
 lien on stock, 158.  
 loans to officers, 155.  
 meetings, 158.  
 name and location, powers, 154.  
 pledge of stock, 157.  
 receivership, 159.  
 repeal of charter, 163.  
 stock certificates, 155, 157, 165.  
 sharing profits with employees, 155.  
 stock subscriptions, 156, 157.  
 sale of shares in mining and oil corporations, 173, 174.  
 stockholders' liability, 157.  
 sale of corporate property, 159.  
 tax on capital stock, 165.  
 transfer of stock, 158.  
 voluntary dissolution, 160, 161.

## CONSULAR REGULATIONS, 629—644.

answers to inquiries of citizens, 630.  
 certificate for transit of merchandise to Canada and Mexico from foreign countries, 644.  
 convict-made merchandise, 643.  
 discrimination against products of the United States, 631.  
 documentation of merchandise for free entry, 639—641.  
 flag of United States, right to fly, 629.  
 foreign-built vessels, 630.  
 importation of neat cattle and hides, 630.  
 invoices &c. of imported merchandise, 631—639; *see* IMPORTATION.  
 landing certificates of exported merchandise, 643, 644.  
 marks of country of origin, 642, 643.  
 record of bills of sale of ships, 629.  
 reports for use of Treasury and Agriculture Departments, 631.  
 returned American merchandise, 641—643.  
 sea letters, 629.  
 sealing cars entering the United States from Canada, 639.  
 transfer of ships abroad to citizens of the United States, 629, 630.  
 tonnage fees, 630, 631.  
 use of consul's name as a business reference, 630.

## CONTRACT:

of corporation, form of, 20.  
     illegal or prohibited, 21.  
     liability of directors on, 29.  
 of directors with corporation, 30, 31.  
 of promoters, 24, 25.  
 restricting voting rights of shareholders, 43, 44.  
 with foreign corporation, 104, 106, 107.

## CORPORATION:

*articles of incorporation*, 13—16.  
     contents generally, 13, 14.  
     corporate duration, 14.  
     corporate name, 14.  
     corporate purpose, 15.  
     first directors, 15.  
     place of business, 14.  
     provisions as to capital, 15, 16.  
     signing and recording, 16.  
     unlawful purpose, 15.  
 authorization, forms of, 11.  
 amendment of by-laws, 23.  
     of charter, 45, 53.  
 appointment of officers, 32.  
 acts as to which votes by shareholders required, 44 *et seq.*  
 adjournment of general meetings, 51.  
 acquisition of shares by, in another corporation, 74.  
 amalgamation, 72—74.

CORPORATION—*continued*

- actions by and against, 74—76.
- assignment by, for benefit of creditors, 77.
- beginning of corporate existence, 16.
- by-laws, 22, 23.
- bonds*, coupons for interest on, 89.
  - issue of, 87, 88.
  - maturity of, 90.
  - negotiability of, 88.
  - transfer of, 89.
- bondholders*, enforcement of security of, 91, 92.
  - priority of, 92.
  - realisation of security by, 92.
  - receiver for, 92.
  - trustee for, 91.
- classification of Acts of various States, 12.
- change of name, 14.
- charter, procuring the, 16.
- corporate powers, 18—21.
- contracts of, form of, 20.
  - liability of directors on, 29.
- combinations, power to enter into, 21.
- combinations in restraint of trade, 598—602; and *see* TRUSTS.
- calls on shares, 35, 36.
- contracts restricting rights of shareholders to vote, 43, 44.
- changes of capital stock, 45 *et seq.*
- consolidation, 72—74.
- creditors, rights of*, 76—87.
  - against directors and officers, 86, 87.
  - against shareholders, 79—86.
  - against transferees of corporate property, 76, 77.
  - appointment of receiver, 79.
  - generally, 76.
  - insolvency as affecting, 77, 78.
  - set-off, 78.
  - to enforce payment of subscriptions, 80—82.
- definition, 10.
- de facto* and *de jure*, 17.
- defective organization, 17, 18.
- directors*, contracts and dealings with corporation by, 30, 31.
  - criminal liability, 30.
  - delegation of powers, 28.
  - duties and liabilities, 29, 30.
  - first, election of, 23.
  - liability for illegal payment of dividends, 63.
  - meetings of, 28.
  - nature of position, 26.
  - powers, 27, 28.
  - profits arising from office, 31, 32.
  - quorum, 28.
  - remuneration, 31.
  - rights of creditors against, 86, 87.
  - selection, number, qualification, 26.
  - shareholders' suits for wrongs of, 55.
  - term of office, resignation, removal, 27.
- discount, issue of bonds at a, 87.
- dissolution*, 65—71.
  - effect of, 69, 70.
  - foreign corporations, 116.
  - forfeiture of franchises, 66, 67.
  - generally, 65.
  - involuntary, brought about by creditors or shareholders, 69.
  - modes of, 65—69.
  - voluntary surrender of charter, 68.
  - winding up after, 70, 71.
- dividends*, 59—63.
  - declaration of, power and duty of directors, 59.
  - effect of declaration of, on rights of shareholders, 61.
  - forms of, 60, 61.
  - illegally paid, 63.



CORPORATION—*continued*

- sources of, 59, 60.
- tenant for life or years and remainderman, 62, 63.
- who entitled to, 61—63.
- double taxation, 96.
- estoppel by share certificate, 39, 40.
- extension of corporate existence, 71.
- evidence of incorporation, 75.
- eminent domain, 94.
- federal tax law, 610—614.
- function of the State, 11.
- formation of, 10 *et seq.*
- forfeiture of franchises, 66, 67.
- franchises, taxation of, 98, 99.
- foreign corporation*, 100—116.
  - adoption of, 113.
  - actions by, in State Courts, 108, 109.
  - attachment and garnishment, 112.
  - contracts with, 104, 106, 107.
  - control of domestic State over conduct of business of, 114—116.
  - control of State Courts over internal affairs of, 114—116.
  - dissolution of, 116.
  - domestication of, 113, 114.
  - dealings with property, 107, 108.
  - "doing business", 105—107.
  - definition, 100.
  - equal protection of laws, 103.
  - insolvency of, 115, 116.
  - internal affairs of, 114—116.
  - judgment against, 111, 112.
  - licence fee, 105.
  - power to act outside chartering State, 100—105.
  - proceedings *in rem* against, 112.
  - procedure in suits by, 109.
  - privilege tax on, 99.
  - receiver, 116.
  - right to sue in State Courts, 108, 109.
  - reports, 114.
  - rule of comity, 101.
  - State statutes concerning: *see* FOREIGN CORPORATIONS.
  - statutory restrictions on admittance, 102—106.
  - suits against, 110—113.
  - service of process on, 110, 111.
  - Statutes of limitation, 113.
  - taxation, 102.
- general meetings, 49—52.
- irregularities in formation, 17, 18.
- interpretation of enabling statute, 18.
- illegal and prohibited contracts, 21.
- income tax on, 610—614.
- increase of capital, 45—47.
- insolvency of, 77, 78, 115.
- interstate commerce, 102.
- judicial intervention in affairs of*, 54—59.
  - disqualifications barring shareholder, 57, 58.
  - foreign corporation, 115.
  - parties to suits by shareholders, 58.
  - right of shareholder who became such subsequent to the act complained of, 57, 58.
  - result of judgment in action by shareholder, 59.
  - shareholders' bill, 54 *et seq.*
  - ultra vires* acts, 54, 55.
  - who is entitled to bring shareholders' bill, 57, 58.
  - wrongs against corporation by third persons, 56.
  - wrongs by majority of shareholders, 56.
  - wrongs of directors, 55, 56.
- legislative control over, 92—94.
- licence fee for admission of foreign corporation, 105.
- management, 24—33.
- meeting, organization, 22.
- monopolies, federal statutes, 598—602; *and see* TRUSTS.

CORPORATION—*continued*

- mortgages and charges, 90—92.
- nature of, 10.
- net profits, what are, 60.
- notice of general meeting, 50, 51.
- negotiability of share certificates, 39, 119, 120.
- notice of organization meeting, 22.
- organization taxes and fees, 16.
- organization after incorporation, 22.
- officers, 32, 33.
- police power of State, 93.
- proof of incorporation, 75, 76.
- preferences of creditors, 77, 78.
- personal liability of shareholders to creditors, 82—86.
- proxies, 43.
- preferred shares, 48, 64, 65.
- promotion, 11.
- power to acquire shares in own or another corporation, 19.
  - to take and hold property, 19.
  - to alienate property, 20.
  - to borrow and incur debts, 20.
- promoters*, compensation for services, 24.
  - dealings with corporation, 25, 26.
  - liability of corporation on contracts of, 24.
  - liability of, on contracts, 25.
    - to corporation, 25, 26.
  - secret profits, 26.
- qualification of incorporators, 12, 13.
- quorum at general meeting, 51.
- quasi consolidation, 73, 74.
- repeal of charter, 65, 92.
- reorganization, 72.
- receiver, right of creditors to appointment of, 79.
  - of foreign corporation, 116.
- reduction of capital, 47, 48.
- remuneration of directors, 31.
  - of officers, 33.
- restraint of trade, combinations in, 598—602; *and see* TRUSTS.
- selection of State of incorporation, 11, 12.
- special powers, 19, 21.
- shares*, acquisition of, 33—40.
  - alteration of certificate, 121.
  - calls, 35, 36.
  - change of par value, 48.
  - conditional subscription, 35.
  - contract of subscription, 34, 35.
  - delivery of unindorsed certificate, 120.
  - estoppel, 39, 40.
  - execution against, 120, 121.
  - forfeiture of, 37.
  - issue of, 23.
    - of preferred or other special classes, 48.
  - lost and destroyed certificates, 121.
  - new subscriptions for, 46, 47.
  - nature of, 33.
  - negotiability of certificates, 39, 119, 120.
  - over-subscription, 35.
  - preferred, 48, 64, 65.
  - payment for, 35, 36.
  - right of creditors to enforce subscriptions, 80—82.
  - registration of transfer, 38, 39.
  - rescission of transfer, 119.
  - special classes of, 64, 65.
  - subscriptions for, 33—35.
  - subscription induced by fraud, 34.
  - taxation of, 99.
  - transfer of, 38—40, 118—122.
  - warranties on transfer of, 120.
  - who may subscribe, 34.
  - who are liable to pay calls &c., 36.

CORPORATION—*continued**shareholders.*

- action by, for injuries to the corporation, 54--58.
  - corporate acts for which votes of, required, 44 *et seq.*
  - control over board of directors, 45.
  - creditors, rights of, against, 79--86.
  - defence by, in suit against corporation, 56.
  - limitations on right to vote, 52.
  - meetings of, 22, 49--52.
  - personal liability to creditors, 82--86.
  - preferred, 48, 64, 65.
  - parties to suits by, 58.
  - powers of majority, 52--54.
    - amendment of charter, 53.
    - requirement of good faith, 53.
  - proxies, 43.
  - rights of, to vote, contracts restricting, 43, 44.
    - to evidence of membership, 40.
    - to inspect books and papers, 40, 41.
    - to share in conducting business, 41 *et seq.*
    - to vote, 41--43.
    - on increase of capital, 46, 47.
    - to deal with corporation, 52.
    - to invoke judicial intervention, 54 *et seq.*
    - to dividends, 59 *et seq.*
  - special classes of, 64, 65.
  - who entitled to vote as, 42.
  - wrongs by majority of, 56.
- shareholders' bill, 54 *et seq.*
- scrip dividends, 61.
- stock dividends, 60, 61.
- subscriptions for new stock, 46, 47.
- surrender of charter, 68.
- succession, 71--74.
- service of process on, 75, 110, 111.
- set-off, 78, 79.
- statutory liability of shareholders to creditors, 82--86.
- statutes concerning, 117 *et seq.*: *see* under names of the various States.
- taxation, 94--99.
  - corporations engaged in interstate commerce, 102.
  - double taxation, 96.
  - exemptions, 95.
  - Federal Tax Law, 610--614.
  - foreign corporations, 102.
  - income tax, 610--614.
  - of capital stock, 97, 98.
  - of corporation property, 96, 97.
  - of franchises, 98, 99.
  - of shares, 99.
  - privilege tax on foreign corporations, 99.
  - power to tax generally, 94.
  - restrictions on power to tax, 95.
- transfer of shares, 38--40, 118--122.
- trusts, 598--602; and *see* TRUSTS.
- ultra vires* acts, 21, 54, 55.
- Uniform Stock Transfer Act, 118--122.
- voluntary dissolution, 68.
- voting trusts, 44.
- working agreements, 74.

## COUPONS, 89.

## CREDITORS OF CORPORATION, RIGHTS OF:

- against directors and officers, 86, 87.
- against shareholders, 79--86.
- against transferees of corporate property, 76, 77.
- appointment of receiver, 79.
- generally, 76.
- insolvency as affecting, 77, 78.
- set-off, 78.
- to enforce payment of subscriptions, 80--82.

## D

DEBENTURES: *see* BONDS.

DELAWARE: CORPORATIONS, 174—192.

- amendment of charter, 179.
- board of directors, 176.
- by-laws, 177.
- certificate of incorporation, 175, 176.
- classes of stock, 177.
- certificate of payment of stock, 179.
- change of location of principal office, 190.
- directors, 181.
- dividends, 182.
- dissolution, 183—188.
- first meeting, 177.
- forfeiture of charter for failure to commence business, 188.
- foreign corporations, 191, 192.
- increase and reduction of stock, 180.
- liability of officers, 184.
  - of stockholders, 178.
- loans to officers, 182.
- lost and destroyed certificates, 188, 189.
- meetings of stockholders, 182.
- merger and consolidation, 186, 187.
- number of persons required, 174.
- officers, 176.
- provisions of Constitution, 174.
- purposes, 174.
- powers, 175.
- renewal of charter, 189, 190.
- sale of franchise, 188.
- service of process, 184.
- transfer of stock, 178, 189.
- votes of stockholders, 178.
- voting list, 181.

DIRECTORS:

- contracts and dealings with corporation, 30, 31.
- criminal liability, 30.
- delegation of powers, 28.
- duties and liabilities, 29, 30.
- first, election of, 23.
- illegal payment of dividends, liability for, 63.
- meetings of, 28.
- nature of position, 26.
- number of, 26.
- powers, 27, 28.
- profits arising from office, 31, 32.
- qualification, 26.
- quorum, 28.
- remuneration, 31.
- resignation and removal, 27.
- rights of creditors against, 86, 87.
- selection of, 26.
- term of office, 27.
- wrongs of, shareholders' suits for, 55.

DISCOUNT:

- issue of bonds of corporation at, 87.

DISSOLUTION OF CORPORATIONS, 65—71.

- effect of, 69, 70.
- foreign corporations, 116.
- forfeiture of franchises, 66, 67.
- generally, 65.
- involuntary, 69.
- modes of, 65—69.
- voluntary surrender of charter, 68.
- winding-up after, 70, 71.

DIVIDENDS, 59—63.

- declaration of, power and duty of directors, 59.
- effect of declaration of, on rights of shareholders, 61.
- forms of, 60, 61.
- illegal payment of, 63.

DIVIDENDS—*continued*

- sources of, 59, 60.
- tenant for life or years and remainderman, 62, 63.
- who entitled to, 61—63.

## E

EMINENT DOMAIN, 94.

## ESTOPPEL:

- by share certificate, 39, 40.

## EVIDENCE:

- of incorporation, 75.

## EXPORTS:

- landing certificates, 643, 644.

FEDERAL CORPORATION TAX LAW, 610—614.

## FLORIDA:

- foreign corporations, 544, 545.

## F

## FOREIGN CORPORATION:

- adoption of, 113.
- actions by, in State Courts, 108, 109.
- Alabama, 534—537.
- Alaska, 537, 538.
- Arizona, 539.
- Arkansas, 539—541.
- attachment and garnishment, 112.
- California, 145—147.
- Colorado, 541—544.
- Columbia, 544.
- Connecticut, 169, 170.
- contracts with, 104, 106, 107.
- control of domestic State over business of, 114—116.
- control of State Courts over internal affairs of, 114—116.
- dealings with property, 107, 108.
- definition of, 100.
- Delaware, 191, 192.
- dissolution, 116.
- “doing business”, 105—107.
- domestication of, 113, 114.
- equal protection of laws, 103.
- Florida, 544, 545.
- Georgia, 546, 547.
- Hawaii, 547, 548.
- Idaho, 549, 550.
- Illinois, 197, 203—205, 210.
- Indiana, 550—553.
- insolvency of, 115, 116.
- internal affairs of, 114—116.
- Iowa, 533—555.
- judgment against, 111, 112.
- Kansas, 555—557.
- Kentucky, 557—559.
- licence fee, 105.
- Louisiana, 222, 223.
- Maine, 237, 238, 243, 244.
- Maryland, 559—561.
- Massachusetts, 257—261, 263.
- Michigan, 282—284, 295.
- Minnesota, 302, 303.
- Mississippi, 561, 562.
- Missouri, 562—565.
- Montana, 565—567.
- Nebraska, 567—569.
- Nevada, 570—572.
- New Hampshire, 572.
- New Jersey, 325—327.
- New Mexico, 573, 574.
- New York, 348—350, 393, 394.
- North Carolina, 574—576.
- North Dakota, 576.

FOREIGN CORPORATION—*continued*

Ohio, 399—401.  
 Oklahoma, 577.  
 Oregon, 578—581.  
 Pennsylvania, 458, 468—472.  
 Philippines, 488, 489, 491.  
 Porto Rico, 499, 500.  
 power to act outside chartering State, 100—105.  
 proceedings *in rem* against, 112.  
 procedure in suits by, 109.  
 privilege tax on, 99.  
 receiver, 116.  
 reports, 114.  
 Rhode Island, 581, 282.  
 right to sue in State Courts, 108, 109.  
 rule of comity, 101.  
 service of process on, 110, 111.  
 South Carolina, 582—584.  
 South Dakota, 584, 585.  
 statutory restrictions on admittance, 102—106.  
 Statutes of Limitation, 113.  
 suits against, 110—113.  
 taxation, 102.  
 Tennessee, 585—587.  
 Texas, 587—589.  
 Utah, 589.  
 Vermont, 590, 591.  
 Virginia, 516, 592—594.  
 Washington, 595—597.  
 Wisconsin, 522—525.  
 Wyoming, 597, 598.

## FORFEITURE:

of franchises of corporation, 66, 67.  
 of shares, 37.

## FREE ENTRY, 639—641.

## G

## GEORGIA:

foreign corporations, 546, 547.

## H

## HAWAII:

foreign corporations, 547, 548.  
 service of process on corporations, 548.

## I

## IDAHO:

annual reports of corporations, 549.  
 articles of incorporation, filing, 549, 550.  
 foreign corporations, 549, 550.  
 service of process on corporations, 550.

## ILLINOIS: CORPORATIONS, 192—210.

authority to mining and manufacturing companies to hold shares of capital stock &c., 197.  
 annual report, 197—199.  
 authority to act by attorney, 205.  
 by-laws of corporations, 194.  
     of co-operative associations, 209.  
 calls, 194, 195.  
 change of name, place of business, objects &c., 199—201.  
 consolidation of railroads, 201.  
 change of number of directors, 201.  
 consolidation of corporation, 202.  
 co-operative associations, 205, 209.  
 directors, 194.  
 dissolution 202, 203.  
     of co-operative association, 209.  
 executors &c. of stockholders, 196.  
 forfeiture of charter of co-operative association, 209.  
 foreign corporations, 197, 203—205, 210.

ILLINOIS: CORPORATIONS—*continued*

- increase or reduction of capital, 199—201.
- licences, 192.
- loans by foreign corporations, 210.
- liability of stockholders, 194, 195.
- meetings of stockholders, 196.
- miscellaneous provisions, 195—197.
- officers, 194.
- organization, 193.
  - of co-operative association, 206.
- pools, trusts, and combines, 606—608.
- powers, 193.
- purposes, 192.
- shareholders in co-operative associations, 207, 208.
- suits against stockholders, 196.
- transfers of stock, 194, 195.
- trusts, 606—608.

## IMPORTATION:

- agent, signature of invoices and declaration by, 634.
- animals for breeding purposes, 639, 640.
- bullion, 632.
- certified invoices required, 632.
- certification of invoices, 635—637.
- consignee deemed owner, 632.
- consignment for sale, 634, 635.
- consular corrections, 637.
- currency certificates, 638.
- convict-made merchandise, 643.
- declaration of port of entry, 635.
- descriptive lists, 638.
- documentation for free entry, 639—641.
- fee for certification of invoices &c., 638.
- goods exported without sale, 635.
- immediate-transportation ports, 632.
- invoices, 632—638.
- market value, how ascertained, 636.
- mineral waters, 640.
- marks of country of origin, 642, 643.
- neat cattle and hides, 630.
- ports of entry, 631.
- personal effects, 632.
- products of American fisheries, 641, 642.
- re-imported American merchandise, 641—643.
- retaliatory tariff provisions, 639.
- small lots, 632.
- shipper's declaration, 633, 634.
- samples, 636, 637.
- transit goods, 632.
- verification of invoices &c., 635, 636.
- works of art, 640, 641.

## IMPORT TRADE:

- trusts in restraint of, 599, 600.

## INCOME TAX:

- on corporations, 610—614.

## INDIANA:

- foreign corporations, 550—553.

## INSOLVENCY:

- of corporation, 77, 78.
- of foreign corporation, 115, 116.

## INTERPRETATION:

- of treaties 627—629.

## INTERSTATE COMMERCE, 102.

INVOICES: *see* IMPORTATION.

## IOWA:

- foreign corporations, 553—555.

## K

## KANSAS:

foreign corporations, 555—557.

## KENTUCKY:

foreign corporations, 557—559.

## L

## LANDING CERTIFICATES, 643, 644.

## LICENCE FEE:

foreign corporations, 105.

## LIEN:

of corporation on shares, 37.

## LOUISIANA: CORPORATIONS, 210—223.

amendment of charter, 213.

annulment of charter, 219.

charter, contents of, 213.

copies of books as evidence, 214.

consolidation, 218.

defunct corporations, receivers of, 222.

dividends, 217, 218.

domicile, 215.

dissolution, 212.

foreign corporations, 222, 223.

forfeiture of charter, 213, 219.

increase or reduction of capital, 216, 217.

liability of stockholders, 213, 215.

liquidation, 214.

meetings, 215.

mortgages, 218.

nature of corporations, their use and kinds, 210.

organization, 212, 215, 216.

powers, 213.

receivers, 220—222.

recording mortgages, 214.

rights, privileges and incapacities, 211, 212.

service of process, 219.

transfer of shares (Stock Transfer Act), 118—122.

validity of corporations informally organized, 216.

## M

## MAINE: CORPORATIONS, 223—244.

annual returns, 228.

change of name, 242, 243.

certificate of incorporation, 225.

change in charter, 230.

corporate powers, 230, 231.

contracts, 234.

by agent, 240.

duties to be paid by corporations chartered by special statute, 224.

on incorporation, 225.

dividends, 229.

dissolution, 238.

execution against property for debts, 237.

executors of stockholders, liability of, 238.

formation must be under general laws, 223.

first meeting, 225.

foreclosure of mortgages, 234—237.

foreign corporations, 237, 238, 243, 244.

forgery of certificates, 240, 241.

instalment bonds, 242.

issue of new shares, 230.

liability of stockholders, 238—240.

meetings, 225, 226.

minority, rights of, 232—234.

mortgages, 234—237.

organization, 224.

officers and their duties, 226—229.

purposes, 224.

proceedings against stockholders, 239, 240.

receivers, 241, 242.



MAINE: CORPORATIONS—*continued*

- reduction of capital, 230.
- sale of franchises, 232.
- shares and shareholders, 229, 230.
- titles indicative of trust or banking business not to be used, 242.
- transfer of shares, 229.
- trusts prohibited, 231, 232.

## MARKS:

- country of origin on merchandise, 642, 643.

## MARYLAND:

- foreign corporations, 559—561.
- transfer of shares (Stock Transfer Act), 118—122.

## MASSACHUSETTS: CORPORATIONS, 245—263.

- Act of 1903 . . 245 *et seq.*
- application of Act of 1903 . . 245.
- agreement of association, 246.
- articles of organization, 247.
- amendment after organization, 253, 254.
- annual reports, 254—256.
- by-laws, 248.
- corporations existing before 1903 . . 245.
- commissioner of corporations, 245.
- corporate name; corporate powers, 246.
- certificate of incorporation, 247.
- co-operative associations, 260.
- change in date of annual meeting, 261.
- changes in officers, 262, 263.
- directors' liability, 252, 253.
- dissolution, 256, 257.
- fees in respect of organization and filing, 259, 260.
- first meeting, 246, 247.
- fishing associations, 260.
- foreign corporations, 257—260.
- foreign banking associations, 261.
- issue of stock, 248.
- increase of capital, 254.
- injunction to restrain unauthorised business, 262.
- meetings, 250, 251.
- officers, 249, 250.
- organization, 246—249.
- political contributions, 263.
- payment of subscriptions, 248, 249.
- reduction of capital, 254.
- service of process on foreign corporations, 263.
- of trustee process on foreign corporations, 261.
- stock, 251, 252.
- stockholders' liability, 252, 253.
- transfer of shares (Stock Transfer Act), 118—122.
- unauthorised banking, 262.

## MEETINGS:

- directors, 28.
- shareholders, 22, 49—52.

## MERCHANDISE:

- importation of: *see* IMPORTATION.
- marks: country of origin &c., 642, 643.

## MICHIGAN: CORPORATIONS, 263—295.

- amendment of charter, 273.
- application for dissolution, 277.
- appeals in dissolution proceedings, 281.
- articles of association, 284—286.
- annual reports, 287—289.
- amendment of articles of association, 289.
- assessment and taxation, 291.
- by-laws, 269.
- books of account, 289.
- calls, 287.
- combinations, 270.
- change of name, 274.
- dissolution, 277—281.
- directors, 286, 294.

MICHIGAN: CORPORATIONS—*continued*

- dividends, 290.
- execution against corporate property, 291.
- extension of corporate existence, 291, 293, 294.
- first meeting, 269, 286.
- filing list of shares, 293.
- foreclosure of mortgages, 274.
- formation, 282, 284.
- foreign corporations, 282—284, 295.
- instalment subscriptions, 287.
- individual liability of stockholders, 270—272.
- injunctions against corporations, 274, 275.
- jurisdiction over officers, 275.
- lien of corporation on stock, 290.
- location of officers, 290.
- mining and manufacturing associations, winding-up of, 264—269.
- meetings, quorum, votes, 287, 290.
- officers, 286.
- provisions of Constitution, 263, 264.
- powers of corporation, 269, 288.
- pledge of stock, 291.
- preferred stock, 292.
- receiver, 266, 267, 277, 278.
- registers of stockholders, 272.
- recording articles of association, 287.
- removal of place of business, 289.
- sale of property and franchises, 273.
- suits against corporations, 274—276.
- sequestration of corporate property, 275.
- service of process, 281, 291, 294, 295.
- stock certificates, 290, 291.
- transfer of stock, 270, 272, 289.
- voluntary dissolution, 277—281.
- winding-up, 264—269.

## MINERAL WATERS:

- importation of, 640.

## MINNESOTA: CORPORATIONS.

- amendment of certificate, 299.
- actions, 304, 305.
- assessments in winding-up, actions for, 307, 308.
- by-laws, 297.
- Constitution, provisions of the, 295.
- certificate of organization, 296, 297.
- capital stock, classification and issue, 300.
- co-operative associations, 303, 304, 308, 309.
- definitions, 295.
- duration; renewal, 297.
- dissolution, 301, 305—308.
- dividends, 299.
- false statements, 301.
- fees, 299.
- foreign corporations, 302, 303.
- forfeiture of rights, 305, 306.
- insolvent banks and insurance companies, 306.
- liability of stockholders, 298, 299.
- management: officers, 297, 298.
- meetings, 300.
- manufacturing corporations, 303.
- purposes, 296.
- powers, 297.
- reports, 299.
- reorganization, 301.
- State certificate of incorporation, 300.
- stock certificates, 300, 301.
- transfer of stock, 298.
- voting, 298.
- winding-up, 307, 308.

## MISSISSIPPI:

- foreign corporations, 561, 562.

## MISSOURI:

foreign corporations, 562—565.

## MONOPOLIES:

Alabama, 534.

California, 602—606.

federal statutes, 598—602.

Illinois, 606—608.

New York, 609, 610.

Wisconsin, 525, 533.

## MONTANA:

foreign corporations, 565—567.

## N

## NEBRASKA:

foreign corporations, 567—569.

## NEGOTIABILITY:

corporation bonds, 88.

share certificates, 39, 119, 120.

## NEVADA:

foreign corporations, 570—572.

## NEW HAMPSHIRE:

foreign corporations, 572.

## NEW JERSEY: CORPORATIONS, 309—339.

assessments on stock, 313.

amalgamation, 327—329.

banking powers not implied, 310.

by-laws, 311.

bonds, issue of, in lieu of preferred stock, 336.

calls, 313.

charters subject to legislative alteration, 310.

certificate of incorporation, 310, 311, 334.

common and preferred stock, issue of, 312.

change in certificate, 313, 314, 334.

consolidation, 327—329, 338.

change in location of office, 332.

cumulative voting, 336.

certificates, reports &c. to be in the English language, 338.

directors and officers, 311.

dividends, 314, 318, 319.

dissolution, 314, 315, 336.

elections, 315—318, 335, 336.

execution against corporation, 320, 321.

extension of corporate existence, 331, 337, 338.

errors in incorporating, correction of, 335.

formation, 310, 311.

foreign corporations, 325—327.

fees on filing certificates, 330.

fraudulent objects, 339.

general meetings, 312, 315—318.

holding shares of other corporations, 319.

increase and reduction of capital &c., 313, 314.

insolvency, 321—324.

lease of corporate property, 335.

lost certificates of stock, 329, 330.

liens on assets in winding-up, 324.

merger of corporations, 327—329.

mutual associations, 331.

notice of intention to repeal charter, 339.

penalty for failure to display name, 318.

powers of corporations, 309, 310.

proof of claims in winding-up, 323.

publication of list of corporations, 331.

records, preservation of, 339.

remedies against officers and shareholders, 325, 331.

receivers, 321—324.

reorganization, 322.

stock certificates, 312, 313.

service of process, 324, 325, 340.

sale of property and franchises, 332, 333.

taxation, 329.

NEW JERSEY: CORPORATIONS—*continued*

- transfers of stock, 312.
- winding-up, 319, 320.
- words not to be used as part of name, 334.

## NEW MEXICO:

- foreign corporations, 573, 574.

## NEW YORK:

- actions by and against corporations, 394, 395.
- Business Corporations Law*, 341—344.
  - capital stock, payment of, 342.
  - consolidation of corporations, 342—344.
  - full liability corporations, 342.
  - incorporation, 341.
  - reorganization of existing corporations, 341.
  - restrictions on commencement of business, 341.
  - right of creditors of consolidated corporations, 344.
- criminal liability for frauds &c. in connection with corporations, 396—398.
- Constitution, provisions of the, 340.
- General Corporation Law*, 344—379.
  - amended and supplemental certificates, 346.
  - action by judgment creditor for sequestration, 357.
    - for dissolution, 358—360.
    - to annul corporation, 360, 361.
    - to dissolve moneyed corporation, 361—364.
  - alteration and repeal of charter, 379.
  - classification of corporations, 345.
  - certificate of incorporation, filing and recording, 345.
  - corporate name, 346.
  - change of name, 354—356.
  - definitions, 345.
  - directors, quorum &c., 352, 354.
  - dissolution without judicial proceedings, 367, 368.
  - evidence, certificate &c. as, 346, 347.
  - election of directors &c., 351, 352.
  - extension and revival of corporate existence, 352, 353.
  - foreign corporations, 348—350.
  - forfeiture for non-user, 352.
  - judicial supervision, 357.
  - liability of directors and stockholders in action by creditors, 359, 360.
  - limitation of powers, 347, 348.
  - miscellaneous provisions in reference to proceedings, 376—379.
  - permanent receiver, 359.
  - prohibition of banking powers, 350.
  - political corporations prohibited, 354.
  - qualifications of incorporators, 345.
  - receivers*, appointment of, generally, 377.
    - authority where more than one, 369.
    - commission and expenses, 376.
    - dividends and surplus, 374.
    - duties, 372—375.
    - final accounting, 375.
    - powers, 369—372.
    - permanent, 359.
    - position in reference to property, 369, 373.
    - renunciation and removal, 375.
    - security from, 368, 369.
    - temporary, 358.
  - sale of corporate real property, 356, 357.
  - temporary receiver and injunction, 358.
  - voluntary dissolution*, 364—367.
    - petition for, 364, 365.
    - proceedings on petition, 365.
    - injunction and temporary receiver, 365.
    - hearing and decision, 366.
    - permanent receiver, 366.
  - votes and proxies, 350, 351.
- Joint-Stock Association Law, 379, 380.
- Lien Law (mortgages of corporations), 393.
- service of process on domestic and foreign corporations, 394.

NEW YORK—*continued*

- Stock Corporation Law*, 380—393.
  - alteration or extension of business, 385.
  - annual report, 387.
  - books to be kept, 387.
  - change of place of business, 383.
  - combinations: merger, 384.
  - directors, 385, 386.
  - financial statement to stockholders, 393.
  - foreign corporations, liability of officers, directors and stockholders, 393.
  - increase or reduction of capital, 390, 391.
  - inspectors, 387.
  - issue and transfers of stock, 388, 389.
  - liability of officers for false reports &c., 388.
    - of stockholders, 389, 390.
  - lost stock certificates, 392.
  - officers, 386.
  - power to borrow and mortgage property, 380.
    - to guarantee bonds of other corporations, 382.
  - preferred and common stock, 390.
  - prohibited transfers to officers and stockholders, 392.
  - reorganization on sale of property and franchises, 382, 383.
  - stock and stockholders, 388—393.
  - subscriptions to stock, 389.
  - validity of mortgages, 381.
  - voluntary sale of franchises and property, 384, 385.
- trusts and monopolies, 609, 610.
- when foreign corporation may sue or be sued, 395.

## NORTH CAROLINA:

- foreign corporations, 574—576.

## NORTH DAKOTA:

- foreign corporations, 576.

## O

## OHIO: CORPORATIONS.

- articles of incorporation, 401—403.
- annual statement to stockholders, 406.
- amendment of articles of incorporation, 410.
- borrowing powers, 408, 409.
- bonds and mortgages, 408, 409.
- capital stock, 405, 406.
- calls, enforcement of, 405.
- corporations created before 1851 . . 411.
- dealings with real estate, 404.
- directors and trustees, 404, 405.
- dividends, 410, 411.
- dissolution, 412.
- elections of directors, 402—404.
- foreign corporations, 399—401.
- formation, 401—404.
- increase of capital, 407, 408.
- insolvency, 407.
- lost and destroyed certificates, 405, 406.
- miscellaneous provisions, 411.
- name of corporation, 402.
- payment of subscriptions, 402.
- preferred stock, 405.
- purchase of stock in other companies, 406.
- political contributions, 411.
- reduction of capital, 408.
- regulations and by-laws, 408.
- sale of entire property, 409, 410.
- stock certificates, 405.
- stockholders, 406—408.
- transfer of shares (Stock Transfer Act), 118—122.

## OKLAHOMA:

- foreign corporations, 577.

## OREGON:

- foreign corporations, 578—581.

## P

## PAINTINGS:

exemption of, from import duty, 640, 641.

## PANAMA: CORPORATIONS.

attachment, 154.

limitations, 154.

receiver, 153.

## PENNSYLVANIA: CORPORATIONS.

acquisition of property, 417, 418.

annual statement of iron and steel companies, 420.

amendment of charter, 424, 425.

authority of executors or trustees to unite with others in organization of, 454.

of officers to act as directors, 456.

by-laws, 415.

bonds and mortgages, 416, 417, 421.

Constitution, provisions of the, 412, 413.

charter of incorporation, 414.

certificate of incorporation, 414.

capital stock, 416.

certificate of due filing of reports and payment of taxes, 428, 429.

change of corporate titles, 446, 452.

of location of principal office &c., 456.

confirmation of titles to real estate, 465.

duty of Attorney-General to institute proceedings, 452, 453.

dissolved corporation, power of officers to convey real estate of, 460, 461.

exercise of franchises after expiration of charter, 468.

escheat of property to Commonwealth, 455, 456, 464.

executions against corporations, 446—450.

elections, 415, 416, 426, 427, 452, 455.

failure by corporation to exercise its powers, 426.

formation, 413, 414.

*foreign corporations,*

bonds and obligations, validation of, 472.

for manufacture of iron, steel and glass, powers of, 469.

holding of real estate by, 468, 469, 471.

power of, to become corporations of Pennsylvania, 470, 471.

prohibition of doing business without authorised agents and places of business,

469, 472.

service of process on, 468.

suits against, 465.

title to real estate, validation of, 472.

increase of capital or indebtedness, 418—420, 439—441.

iron and steel companies, 420, 421.

investment of surplus funds, 452.

increase or reduction of par value of shares, 441.

judgment debts against corporations, recovery of, 446, 447.

letters patent of incorporation, 454.

liability of stockholders, 417, 419, 421.

management, 415, 426, 427, 455.

merger and consolidation, 429, 443, 444.

meetings, 451, 456.

married women shareholders, 453.

*mechanical, mining, manufacturing &c. corporations,*

amount of capital stock, 421.

annual certificates of assets &c., 422, 432.

acquisition and alienation of property, 423, 432, 431.

by-laws, 430.

calls, 421, 430, 431.

capital stock, 430.

compulsory acquisition of property, 423, 424.

corporation stores prohibited, 425.

certificate of incorporation &c., 432.

directors and officers, 430.

dividends, 422, 431.

enforcement of calls, 421.

exercise of franchises after expiration of charter, 436.

extension of charter, 436, 437.

false certificates, 432.

first meeting, 429.

incorporation, 429.

PENNSYLVANIA CORPORATIONS—*continued*

- increase of stock, 430, 433.
  - liability of stockholders, 422, 432, 433.
    - of directors for debts, 422.
  - loans to stockholders, 431.
  - management, 430.
  - meetings, 430.
  - mortgages, enforcement of, 435, 436.
  - number of incorporators, 429.
  - objects, 429.
  - reduction of capital, 431, 432.
  - renewal of charter, 423.
  - registration of stockholders, 435.
  - service of process on, 422, 453.
  - transfer of shares, 430.
  - winding-up, 436.
  - number of incorporators, 413, 414, 427, 428.
  - newspaper corporations, 434.
  - number of directors, 456.
  - petition for permission to surrender powers or for dissolution by corporation, 460.
  - power to deal in securities of other corporations, 457.
    - to borrow for redemption of previous loans, 454.
    - of legislature to annual charter, 451.
  - powers generally, 413, 441.
  - preferred stock, 417, 437.
  - purchase and sale of patents, corporation for, 434.
  - petroleum, dealers in, 434.
  - proxies and voting, 437, 438, 444—446.
  - quo warranto, writ of, 461—464.
  - quorum of directors or managers, 452.
  - reduction of capital, 419, 438, 439, 441.
  - registration, 419.
  - real estate, sale, leases and mortgages of, 455.
  - service of process, 447, 457—460.
    - on stockholders, 453.
  - stock certificates, 415, 439.
  - sale of railroads, canals, turnpikes, bridges &c., 441, 442.
  - suits against corporations, 449—451.
  - transfer of shares (Stock Transfer Act), 118—122.
  - writs of attachment, ejectment and replevin, service of, 458.
  - writs of summons &c., service of, 457, 458.
- PHILIPPINES: CORPORATIONS.
- articles of incorporation, 473—477.
  - acquisition of land &c., 477, 490.
  - amendment of articles, 479.
  - books, records and reports, inspection of, 485, 486.
  - by-laws, 480.
  - calls, 483—485.
  - certificate of incorporation, 477.
  - continuance after expiration of charter, 490.
  - definitions and classes of corporations, 473.
  - dividends, 478.
  - directors, 481, 482.
  - default in payment of subscriptions, 483, 484.
  - election of directors and officers, 481, 482.
  - formation, 473—477.
  - fee for filing articles of association, 477.
  - forced sale of franchises, 486, 487.
  - foreign corporations, 488, 489, 491.
  - general powers, 477—480.
  - government inspection, 486.
  - increase or reduction of capital, 478, 479.
  - meetings, 480, 481.
  - minutes, 485.
  - misnomer, 489.
  - officers, 482.
  - ordinary and limited partnerships, 490, 491.
  - qualification of directors, 481.
  - removal of directors, 482.
  - sale of stock for default in payment of calls, 484, 485.

## PHILIPPINES: CORPORATIONS.

- stock and stockholders, 482, 483.
- service of process and notices on foreign corporation, 489.
- special franchises guaranted by Philippine Commission, 491.
- voluntary dissolution, 487, 488.

POOLS: *see* TRUSTS.

## PORTO RICO: CORPORATIONS:

- articles of incorporation, 492.
- amendment of articles, 495.
- annual reports, 497.
- by-laws, 493.
- commencement of corporate existence, 493.
- certificates as to paid in capital, 494.
- directors and officers, 493.
- dividends, 495.
- dissolution, 497—499.
- election of directors, 496, 497.
- first meeting, 493.
- formation, 492.
- foreign corporations, 499, 500.
- judicial investigations concerning elections, 497.
- liabilities of stockholders, 494.
- of directors, 499.
- meetings, 493, 494.
- payment of capital stock, 495.
- powers, 491, 492.
- revocation of incorporation, 492.
- transfer books, 496.

## PORTS OF ENTRY, 631, 632, 635.

## PREFERRED SHARES. 48, 64, 65.

## PROMOTERS:

- compensation for services, 24.
- dealings with corporations, 25, 26.
- liability of corporation on contracts of, 24.
- liability of, on contracts, 25.
- to corporation, 25, 26.
- secret profits, 26.

## PROXIES, 43.

## R

## RECEIVER:

- for corporation bondholders, 92.
- of foreign corporation, 116.
- right of creditors of corporation to appointment of, 79.

## RESTRAINT OF TRADE:

- combinations in, Alabama, 534.
- California, 602—604.
- federal statutes, 598—602.
- Illinois, 606—608.
- New York, 609, 610.
- Wisconsin, 525, 533.

## RHODE ISLAND:

- foreign corporations, 581, 582.

## S

## SEA LETTERS, 629.

## SECRET PROFITS:

- directors, 31, 32.
- promoters, 26.

## SERVICE OF PROCESS:

- on corporation, 75.
- on foreign corporation, 110, 111 *and see* FOREIGN CORPORATIONS.

## SET-OFF:

- creditors of corporation, 78.

## SHARES:

- acquisition of, 33—40.
- alteration of certificate, 121.
- calls, 35, 36.
- change of par value, 48.
- conditional subscription, 35.



**SHARES—continued**

- contract of subscription, 34, 35.
- delivery of unindorsed certificate, 120.
- estoppel, 39, 40.
- execution against, 120, 121.
- forfeiture of, 37.
- issue of, 23.
  - of preferred or other special classes, 48.
- lost and destroyed certificates, 121.
- nature of, 33.
- negotiability of certificates, 39, 119, 120.
- new subscriptions for, 46, 47.
- over-subscription, 35.
- payment for, 35, 36.
- preferred, 48, 64, 65.
- registration of transfer, 38, 39.
- rescission of transfer, 119.
- right of creditors of company to enforce subscriptions, 80—82.
- special classes of, 64, 65.
- subscriptions for, 33—35.
  - induced by fraud, 34.
- taxation of, 99.
- transfer of, 38—40, 118—122.
- warranties on transfer of, 120.
- who may subscribe, 34.
- who are liable to pay calls &c., 36.

**SHAREHOLDERS:**

- action by, for injuries to the corporation, 54—58.
- control over board of directors, 45.
- corporate acts for which votes of, required, 44 *et seq.*
- creditors, rights of, against, 79—86.
- defence by, in suit against corporation, 56.
- limitations on right to vote, 52.
- meetings of, 22, 49—52.
- parties to suits by, 58.
- personal liability to creditors, 82—86.
- powers of majority, 52—54.
  - amendment of charter, 53.
  - requirement of good faith, 53.
- preferred, 48, 64, 65.
- proxies, 43.
- rights of, on increase of capital, 46, 47.
  - to vote, contracts restricting, 43, 44.
  - to evidence of membership, 40.
  - to inspect books and papers, 40, 41.
  - to share in conducting business, 41 *et seq.*
  - to vote, 41—43.
  - to deal with corporation, 52.
  - to invoke judicial intervention, 54 *et seq.*
  - to dividends, 59 *et seq.*
- special classes of, 64, 65.
- who entitled to vote as, 42.
- wrongs by majority, 56.

**SHAREHOLDER'S BILL, 54 *et seq.*****SHIP:**

- flag of United States, right to fly, 629.
- foreign-built, 630.
- recording of bill of sale, 629.
- sea letters, 629.
- transfer abroad to citizens of the United States, 629, 630.

**SOUTH CAROLINA:**

- foreign corporations, 582—584.

**SOUTH DAKOTA:**

- foreign corporations, 584, 585.

**STATUARY:**

- exemption from import duty, 640, 641.

**STATUTES:**

- concerning corporations, 117 *et seq.*: *see under names of particular States.*
- abbreviations used in citing, 117, 118.

## STATUTES OF LIMITATION:

foreign corporations, 113.

## STOCK TRANSFER ACT, 118—122.

## T

## TAXATION:

capital stock of corporations, 97, 98.

corporation property, 96, 97.

corporations engaged in interstate commerce, 102.

double, 96.

exemptions, 95.

Federal Tax Law, 610—614.

foreign corporations, 99, 102.

franchises, 98, 99.

income tax on corporations, 610—614.

power to tax corporations generally, 94.

privilege tax on foreign corporations, 99.

restrictions on power to tax corporations, 95.

shares, 99.

## TENNESSEE:

foreign corporations, 585—587.

## TEXAS:

foreign corporations, 587—589.

## TONNAGE FEES, 630, 631.

## TRANSFER:

corporation bonds, 89.

shares: *see* SHARES.

## TREATIES (COMMERCIAL):

Argentine Republic, 617.

Austria-Hungary, 617.

Belgium, 617.

Bolivia, 617, 618.

Borneo, 618.

China, 618.

Colombia, 619.

Congo, 619.

Cerea, 619.

Costa Rica, 619.

Cuba, 620.

Denmark, 620.

Egypt, 620.

enforcement of, 627—629.

Ethiopia, 621.

France, 621.

Great Britain, 621.

Hanseatic Republics, 621.

history of, 616.

Honduras, 622.

interpretation of, 627—629.

Italy, 622.

Japan, 622, 623.

Liberia, 623.

Mecklenburg-Schwerin, 623.

Morocco, 623.

Muscat, 623.

Netherlands, 623, 624.

Norway and Sweden, 626, 627.

Ottoman Empire, 624.

Paraguay, 624.

Persia, 624.

Prussia, 624.

Russia, 625.

Servia, 625.

Siam, 625, 626.

Spain, 626.

Sweden and Norway, 626, 627.

Switzerland, 627.

Tonga, 627.

Tripoli, 627.

Zanzibar, 627.

## TRUSTS:

- Alabama, 534.
- California, 602—606.
- federal statutes, 598—602.
- Illinois, 606—608.
- New York, 609, 610.
- Wisconsin, 525, 533.

## U

## ULTRA VIRES:

- acts of corporations, 21, 54, 55.

## UNIFORM STOCK TRANSFER ACT, 118—122.

## UTAH:

- foreign corporations, 589.

## V

## VERIFICATION:

- of invoices &c. of imported merchandise, 635, 636.

## VERMONT:

- foreign corporations, 590, 591.

VIRGINIA: *see* WEST VIRGINIA:

- annual reports of corporations, 593.
- chartering of corporations, 592.
- foreign corporations, 592—594.

## W

## WASHINGTON:

- foreign corporations, 595—597.

## WEST VIRGINIA: CORPORATIONS.

- annulment of charter or privileges, 502.
- alteration or repeal of charter, 502.
- agreement of incorporation, 511, 512.
- certificate of incorporation, 502, 512—514.
- corporate name, 502, 503.
- change of name, 503.
  - of location of principal office, 515.
- certificates of stock, 505, 506.
- change in par value of shares, 514.
- copies of certificates of incorporation, 515.
- dissolution or expiration, 500, 509, 510.
- dividends, 506.
- directors, 507, 508.
- duration of corporate existence, 513.
- extension of corporate existence, 513.
- failure to pay calls, 504, 505.
- first meeting, 514.
- foreign corporations, 516.
- general powers, 500.
- investigation of funds, books &c., 507, 510.
- increase or reduction of capital, 515.
- joint stock companies, 501 *et seq.*
- mode of incorporation, 501, 511.
- meetings of stockholders, 506, 507, 515.
- number of stockholders, 503.
- officers and agents, 508.
- ownership and transfer of shares, 503, 504.
- payments on stock by corporators, 512.
- purposes of incorporation, 510, 511.
- proxies, 507.
- preferred stock, 503.
- process against, 501, 510, 516.
- receivers, 509.
- recording of certificate of incorporation, 514, 515.
- reports of directors, 507.
- records of proceedings of directors, 508.
- sale of shares, 504.
- suspension of business, 502.
- subscription of shares, 504.
- security for calls, 505.

## WISCONSIN: CORPORATIONS.

- articles of association, 527, 528.
- amendment of charter or articles, 529, 532.
- annual reports, 529, 530.
- corporate powers, 517, 530, 531.
- capital stock, 518.
- consideration for stock, 518.
- combinations and trusts, 525, 533.
- defective organization, 532.
- discrimination in buying milk, cream &c., 533.
- dissolution, 520, 531, 532.
- dividends, 521.
- election of officers, 520.
- examination by Attorney-General, 521.
- foreign corporations, 522—525.
- inspection of books, 519.
- liability of stockholders, 519, 521.
- management, 531.
- meetings, 520.
- office; books; statement of accounts, 517, 518.
- organization, by whom and for what purposes, 525—527.
- preferred stock, 519.
- promoters, liability of, 528.
- quorum, 517.
- reduction of stock, 519.
- reorganization, 531.
- transfer of stock, 518.

## WYOMING:

- foreign corporations, 597, 598.



PRINTED BY SEAMERSCHE BUCHDRUCKEREI, LEIPZIG

# THE COMMERCIAL LAWS OF THE WORLD

In their original languages, accompanied by an English translation.

In 35 large volumes, handsomely bound in leather.

Price for the set £1.15s, net a volume. Separate volumes £2.2s, net each.

---

**T**HE ceaseless expansion of the world's trade has made it a necessity for merchants and lawyers to study the commercial, exchange, bankruptcy and maritime laws of the countries with which they, or their clients have dealings. The man of business who has to deal with foreign countries soon finds himself in difficulties unless he is "au courant" with the laws of such countries. The lawyer who advises, the judge who gives decisions, are often at a loss when they come into contact with the laws of other countries. Consequently the time has come when it is necessary to collect the Commercial Laws of the World in an accessible form, to interpret them, and to place them in a reliable and exhaustive work ready to hand. Lawyers, commercial men, export merchants and trading corporations will find in this work convenient and trustworthy information as to the legal obligations arising from operations abroad. In commercial life it will remove that feeling of uncertainty in regard to points of law which has often checked the prosperous development of important international trade relations. From its pages lawyers will be in a position to obtain exhaustive information on points of law on behalf of their clients engaged in commerce with foreign countries. Governments, Consulates and Judges may feel confident of being in a position to refer in this work to a consensus of authoritative opinion on commercial law. In recognition of its significance for the trade and commerce of the world, governments of all nations have placed official material at its disposal.

THE WORK DOES NOT PRESENT A MERE REPRINT OF  
THE CODES OR STATUTES, BUT IN ITS NOTES AND  
COMMENTARIES SUMMARISES EVERYTHING NECES-  
SARY TO A THOROUGH GRASP OF THE PRINCIPLES  
OF COMMERCIAL LAW.

# THE COMMERCIAL LAWS OF THE WORLD

The following list of volumes will show how the laws of the different nations are distributed throughout the work:

## SOUTH AMERICA.

Volume

- 1. Argentine Republic and Uruguay
- 2. Colombia
- 3. Venezuela, Ecuador
- 4. Brazil
- 5. Peru, Bolivia
- 6. Chile, Paraguay

## NORTH AND CENTRAL AMERICA.

Volume

- 7 and 8. United States of America
- 9. Mexico, Guatemala, Cuba
- 10. San Salvador, Dominica, Nicaragua
- 11. Costa Rica, Honduras, Haiti, Panama.

## AFRICA AND ASIA.

Volume

- 12. Egypt, Morocco, Liberia, Persia, China, Japan, Siam.

## NORTH AND NORTH-WEST EUROPE.

Volume

- 13 and 14. Great Britain and Ireland
- 15. British Dominions and Protectorates in Europe and Africa
- 16. " " " " in Asia
- 17. " " " " in America
- 18. " " " " in Australasia
- 19. Sweden, Norway
- 20. Denmark, Scandinavia.

} See below for details of these volumes.

## CENTRAL EUROPE.

Volume

- 21. France, Monaco
- 22. Belgium, Luxemburg.
- 23. Netherlands and Dutch East Indies
- 24, 25 and 26. German Empire
- 27 and 28. Austria, Hungary, Bosnia, Herzegovina, Croatia and Slavonia
- 29. Switzerland.

## EAST EUROPE.

Volume

- 30. Russia, Poland
- 31. Finland, Servia, Montenegro.

## SOUTH EUROPE.

Volume

- 32. Spain
- 33. Portugal, Greece
- 34. Bulgaria, Turkey
- 35. Rumania, Italy, San Marino.

## WHAT THE WORK CONTAINS.

The volumes cover the whole ground of Commercial Law, including, inter alia,

Contracts	Sale of Goods	Demurrage
Trade Usages and Customs	Banking	Average
Agency	Stock Exchanges	Lien
Companies	Guarantees	Salvage
Partnerships	Maritime Law, including	Towage
Bills of Exchange	Affreightment	Collision
Promissory Notes	Bills of Lading	Marine Insurance
Cheques	Charter-Parties	Carriage by Land
Negotiable Instruments.	Bottomry	Bankruptcy and Insolvency.

## CLASSIFICATION OF THE MATERIALS.

### a) THE HISTORICAL DEVELOPMENT OF THE COMMERCIAL LAWS OF ALL COUNTRIES.

A treatise on the historic development and scope of commercial legislation, together with, where requisite, an account of the economic progress of the country in question.

### b) THE EXISTING LITERATURE OF THE COMMERCIAL, EXCHANGE, BANKRUPTCY AND MARITIME LAWS OF ALL COUNTRIES.



- c) **CONSTITUTION OF THE COURTS AND LEGAL PRACTICE.**  
d) **LEGISLATION, CASE LAW AND TRADE USAGES AND CUSTOMS, including the Legal Provisions concerning the following:**  
Commercial Dealings in General: Trading Associations (Joint Stock Companies and Partnerships)—Brokers—Commission Agencies.  
Sale of Goods—Exchanges.  
Bills of Exchange: (Forms of Bills of Exchange, Duties of Drawers, Indorsement, Presentation, Acceptance, Maturity, Payment, Surety, Protest, &c.). Cheques: Promissory Notes.  
Bankruptcy Proceedings: (Liquidation and Compulsory Bankruptcy), Liens, Rights of Married Persons.  
Maritime Law: (Ocean Trade, Maritime Enactments, Marine Insurance; Navigation and Friendly Treaties concluded between different States).  
Carriage by Land.

## **DISTRIBUTION OF THE COUNTRIES IN THE BRITISH EMPIRE.**

### **Volume 15. Part I. EUROPE:**

Isle of Man, Channel Islands, Gibraltar, Malta, Cyprus.

### **Part II. AFRICA:**

South Africa, Rhodesia, Sierra Leone, Gold Coast, Somaliland, Anglo-Egyptian Sudan, British Central Africa, British East Africa, Northern Nigeria, Southern Nigeria, Zanzibar, Uganda, Mauritius (incl. Rodriguez), Seychelles (incl. Amirantes), St. Helena, Ascension.

### **Volume 16. ASIA:**

Empire of India, Ceylon, Hongkong, Weihaiwei, Johore, North Borneo, Sarawak, Brunei, Straits Settlements including Penang (Prince of Wales Island), Wellesley, Malacca, Singapore, Cocos Islands, Christmas Island, Labuan, Laccadives, Andaman Islands, Nicobar Islands, Federated Malay States, including Perak, Selangor, Negri Sembilan (including Sungei Ujong), Pahang, Kedah, Kelantan, Trengganu.

### **Volume 17. AMERICA:**

Canada, Newfoundland, West Indies, British Honduras, British Guiana, Falkland Islands.

### **Volume 18. AUSTRALIA AND PACIFIC ISLANDS:**

Australia, New Zealand, Fiji, Western Pacific (including Tonga, Ellice, Gilbert, Ocean, Southern Solomon, Santa Cruz, New Hebrides, Union Islands, Pitcairn Island; Miscellaneous Islands: Humphrey, Bahrein, Rierson, Christmas (No. 2), Penrhyn, Suwarrow, Phenix, Jarvis, Fanning, &c.).

## **NAMES OF CONTRIBUTORS TO VOLUMES 13 AND 14** **GREAT BRITAIN AND IRELAND.**

Sir Frederick Pollock, Bart., D.C.L., LL.D., of Lincoln's Inn, late Corpus Professor of Jurisprudence in the University of Oxford. (Introduction.)

Thomas Baty, D.C.L., LL.D., of the Inner Temple. (Constitution of the Courts and Procedure.)

Evans Austin, LL.D., M.A., of the Middle Temple; also of the Irish Bar. (Commercial Laws of Ireland.)

J. W. Brodie-Innes, B.A., LL.M., of Lincoln's Inn; also of the Scots Bar. (Commercial Laws of Scotland.)

Aubrey J. Spencer, M.A., of Lincoln's Inn. (Partnership.)

Wyndham A. Bewes, LL.B., of Lincoln's Inn. (Banking, Stock Exchange and Guaranties.)

H. W. Disney, B.A., of Lincoln's Inn. (Carriage by Land.)

J. Gerald Pease, B.A., of the Inner Temple. (Contracts.)

F. G. Underhay, of the Inner Temple. (Trade Marks and Trade Names.)

Arthur B. Langridge, B.A., of the Middle Temple. (Maritime Law.)

N. W. Sibley, B.A., LL.M., of Lincoln's Inn. (Bankruptcy and Insolvency.)

The General Editor. (Agency.)

Walter J. B. Byles, of the Inner Temple. (Bills, Notes, Cheques, and other Negotiable Instruments.)

F. D. Mackinnon, M.A., of the Inner Temple. (Marine Insurance.)

J. Bromley Eames, B.C.L., of the Middle Temple. (Sale of Goods.)

A. F. Topham, LL.M., of Lincoln's Inn. (Companies.)

*Barristers-at-Law.*

C. E. A. Bedwell, Librarian to the Honourable Society of the Middle Temple. (Bibliography.)

## **TRADE MARKS.**

A Companion volume, dealing with the Laws of all civilised countries relating to Trade Marks, is in preparation, and will appear immediately after the final volume of the Commercial Laws of the World. The price will probably be less than £2 2s

## THE AUTHORS AND EDITORS.

As will be seen from the following list, the work has been compiled by some of the most eminent jurists of the countries concerned, and its accuracy may be relied upon. The work has been greatly promoted by the active assistance given by many foreign governments which have thus recognized the important service it renders to the world's trade.

**CONSULTING EDITOR:** The Hon. Sir THOMAS EDWARD SCRUTTON, Judge of the King's Bench Division of the High Court of Justice.

**GENERAL EDITOR:** WILLIAM BOWSTEAD  
Of the Middle Temple, Barrister-at-Law.

**AMERICA, UNITED STATES OF.** Charles Henry Huberich, J. U. D. (Heidelberg), D. C. L. (Yale), LL. D. (Melbourne), Counsellor at Law, Berlin and Paris, Professor of Law in the Law School of the Leland Stanford Junior University; Frank E. Chipman, Attorney at Law, Boston; Joseph Richardson Baker, A. B., of the Solicitor's Office of the Department of State, Washington. H. W. Ballantine, of the San Francisco Bar, Professor of Law in the University of Montana; Robert Thomas Devlin, United States Attorney, Northern District of California; Charles Andrews Huston, Professor of Law, Stanford University, California; Donald J. Kiser, Counsellor at Law, Chicago; James B. Lichtenberger, Fellow-in-Law, University of Pennsylvania; Philadelphia; J. W. Magrath, Counsellor at Law, New York; William Underhill Moore, A. M., LL. B., Professor of Law in the University of Wisconsin (Madison); Orrin Kip McMurray, Professor of Law, University of California, Berkeley; W. R. Vance, Professor of Law, Yale University, New Haven.

**ARGENTINE REPUBLIC.** Professor Dr. Ernesto Quesada, Buenos-Aires.

**AUSTRIA.** Dr. Gertscher, President of the High Court, Trieste.

**BELGIUM.** Léon Hennebicq, Avocat à la Cour d'Appel, Brussels.

**BOLIVIA.** Artur Fernandez Pradel, Advocate La Paz.

**BOSNIA-HERZEGOVINA.** Dr. Gertscher, President of the High Court, Trieste.

**BRAZIL.** Dr. Rodrigo Octavio Langgaard de Menezes, Advocate, Rio de Janeiro.

**BULGARIA.** Dr. M. St. Schischmanow, first Secretary of Legation to the Agence Diplomatique de Bulgarie; Dr. Subow, State Counsellor, High Court of Appeal, Sofia.

**CHILE.** Fernandez Pradel, Dr. Julio Philippi, Advocates, Santiago.

**CHINA.** Dr. Chung-Hui-Wang, Shanghai; Prof. Dr. Forke, Berlin.

**COLOMBIA.** Antonio José Uribe, Advocate, Bogotá.

**COSTA RICA.** Dr. Ramon Zelaya, Advocate, San José de Costa Rica.

**CROATIA AND SLAVONIA.** Prof. Dr. Cupovic, Prof. Vrbanic, Agram.

**CUBA.** Professor Dr. del Cueto, Dean of the Legal Faculty, Havana.

**DENMARK.** Dr. Tybjerg, Counsellor and Assessor of the Criminal Court, Copenhagen.

**DOMINICA.** Dr. R. Kuck, Advocate, Secretary of Legation, Hamburg.

**DUTCH INDIES.** Dr. F. C. Hekmeyer, Judge-President, s'Gravenhage.

**ECUADOR.** Francisco José Urrutia, Advocate, Quito.

**EGYPT.** Dr. Friedrick v. Dumreicher, Advocate of the Mixed Court of Appeal and Legal Adviser to the Austro-Hungarian Consulate, Cairo.

**FINLAND.** Hermann Klibanski, Advocate, Berlin.

**FRANCE.** Dr. G. Horn, Avocat à la Cour, Paris.

**GERMAN EMPIRE, THE.** Karl Lehmann, Professor of Jurisprudence, Goettingen.

**GREAT BRITAIN AND IRELAND.** See List above.

**BRITISH DOMINIONS AND PROTECTORATES.** Joseph Baptista, Barrister-at-Law, Professor of Jurisprudence in the Local Government Law School, Bombay; Charles Henry Huberich, J. U. D. (Heidelberg), D. C. L. (Yale), LL. D. (Melbourne), Counsellor at Law, Berlin and Paris, Professor of Law in the Law School of the Leland Stanford Junior University (California); R. W. Lee, Professor of Roman-Dutch Law, London; M. A. Refalo, LL. D., Assistant Crown Advocate, Professor of Commer-

cial Law, University of Malta, Valletta; W. P. B. Shephard, Barrister-at-Law, London; W. H. Stuart, Barrister-at-Law, Cape Colony.

**GREECE.** Dr. von Streitt, Advocate, Athens; Dr. G. Diobounlotti, Advocate, Athens.

**GUATEMALA.** José Aspuru, Advocate and Notary, Guatemala.

**HAITI.** Alexandre Poujol, Judge of the Civil Tribunal, Haiti.

**HONDURAS.** Pedro F. Bustillo, Advoc. Tegucigalpa.

**HUNGARY.** Prof. Dr. Béla-Levy, Advoc., Budapest.

**ITALY.** Dr. Alavo Angelo Sraffa, Professor Parma University; Count Sommati de Mombello, Dr. jur., Berlin.

**JAPAN.** Dr. Lönholm, Prof. at the University of Tokio.

**LIBERIA.** Prof. F. Mc. Cants Stewart, Monrovia.

**LUXEMBURG.** Emile Reuter, Advocate, Luxemburg.

**MEXICO.** Sanchez P. Suarez, Advocate, Mexico.

**MONACO.** Baron de Rolland, President of the Supreme Court.

**MONTENEGRO.** Mitar Djurowitsch, Advoc., Cetinje.

**MOROCCO.** Prof. F. Steinführer, Dragoman, Tangiers.

**NETHERLANDS, THE.** M. van Regteren Atena, Advocate, Member of the Association for Trade and Commerce, Amsterdam.

**NICARAGUA.** Dr. jur. Ramón Zelaya, Advocate and Consul-General of Costa Rica, Genoa.

**NORWAY.** E. Hambro, K. C., Christiania.

**PANAMA.** Heinrich Huss, Bogotá.

**PARAGUAY.** A. Schuler, Advocate, Asuncion.

**PERSIA.** James Greenfield, Dr. rer. pol., Tabriz.

**PERU.** Miguel de la Lama, Judge of the Supreme Military Court, Lima (Peru).

**POLAND.** Heinrich Klibanski, Advocate, Berlin.

**PORTUGAL.** Ed. Alves de Sá, Advocate, Lisbon.

**RUMANIA.** Dr. Flaisten, Judge of the Court of Appeal, Bucharest.

**RUSSIA.** Dr. Zavadskij, Lecturer at Kasan; Dr. Pergament, Advocate, President of the Chamber of Advocates, Odessa; Mr. Klibanski, Advocate, Berlin.

**SAN MARINO.** Professor Gianini, Rome.

**SAN SALVADOR.** Professor Dr. Reyes Arrieta Ross, Advocate, San Salvador.

**SCANDINAVIA.** Dr. Tybjerg, of the Criminal Court, Copenhagen; E. Hambro, K. C., Christiania; Dr. A. Aström, Lund.

**SERVIA.** Andreas Georgewitsch, K. C., formerly Professor of Jurisprudence, Belgrade; Dr. Stanoje Michajlowitsch, Attaché to the Servian Embassy, Berlin.

**SIAM.** L'Evesque, Secretary of the Codification Committee of the Ministry of Justice, Bangkok.

**SPAIN.** Dr. Lorenzo Benito, Barcelona.

**SWEDEN.** Adolph Aström, Dr. jur., Lund.

**SWITZERLAND.** Dr. Ludwig Rudolf von Salls, Hon. Prof. at Zurich University; Dr. Mamelock, Advocate, Zurich.

**TURKEY.** M. Padel, Consul of the German Empire in Beirut.

**URUGUAY.** Dr. Daniel Garcia Acevedo, Montevideo.

**VENEZUELA.** Dr. Angel Cesar Rivas, Advocate Caracas.

### TRANSLATORS:

W. R. Bisschop, LL. D., Barrister-at-Law.

Dr. Ernő Pickler, Advocate of Budapest.

Phillip A. Ashworth, LL. D., Barrister-at-Law.

F. J. Collinson, Barrister-at-Law.

Wyndham A. Bewes, LL. B., Barrister-at-Law.

Edw. S. Cox-Sinclair, Barrister-at-Law.

N. W. Shibley, B.A., LL. M., Barrister-at-Law.

Thomas Hynes, LL. B., Barrister-at-Law.

Montague R. Emanuel, M.A., B.C.L., Barrister-at-Law.

G. Stuart Robertson, M.A., Barrister-at-Law.

J. W. Scobell Armstrong, Barrister-at-Law.

W. Butler Lloyd M.A., Barrister-at-Law.

Horace B. Samuel, M.A., Barrister-at-Law.

John Norris Marsden, English Solicitor, Lisbon.

Sidney Leader, English Solicitor, London and Berlin.

Sweet & Maxwell, Ltd., London, 3, Chancery Lane







University of California  
SOUTHERN REGIONAL LIBRARY FACILITY  
405 Hilgard Avenue, Los Angeles, CA 90024-1388  
Return this material to the library  
from which it was borrowed.

---

UC SOUTHERN REGIONAL LIBRARY FACILITY



**D** 000 356 664 3

